THE GENERAL STATUTES OF NORTH CAROLINA

-

ANNOTATED

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1994 CUMULATIVE SUPPLEMENT

VOLUME 13

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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 13

Chapters 98 through 105B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

D. S. Tussey, K. S. Mawyer, K. J. Kennedy
and F. J. Payne

Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

THE MICHIE COMPANY
Law Publishers
Charlottesville, Virginia
1994

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Preface

This Cumulative Supplement to Volume 13 contains the general laws of a permanent nature enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 98 through 105B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

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Chapter 98.
Burnt and Lost Records.

§ 98-2. Originals may be again recorded.

CASE NOTES

Cited in Harrelson v. Soles, 94 N.C. App. 557, 380 S.E.2d 528 (1989).

Chapter 99B.

Editor's Note. — The legislation and annotations affecting Chapter 99B have been included in a recently published replacement chapter.

Chapter 99D.

Civil Rights.

§ 99D-1. Interference with Civil Rights.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993).

Chapter 100.

Monuments, Memorials and Parks.

Article 1.

Approval of Memorials, Works of Art, etc.

Sec.
100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

Article 3.

Mount Mitchell Park.

100-11. Duties.
Sec.
100-12. Roads, trails, and fences authorized; protection of property.
100-13. Fees for use of improvements; fees for other privileges; leases; rules.
100-14. Use of fees and other collections.
100-15. Annual reports.

ARTICLE 1.

Approval of Memorials, Works of Art, etc.

§ 100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

No memorial or work of art shall hereafter become the property of the State by purchase, gift or otherwise, unless such memorial or work of art or a design of the same, together with the proposed location of the same, shall first have been submitted to and approved by the North Carolina Historical Commission; nor shall any memorial or work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the State. No existing memorial or work of art owned by the State shall be removed, relocated, or altered in any way without approval of the North Carolina Historical Commission. The term "work of art" as used in this section shall include any painting, portrait, mural decoration, stained glass, statue, bas-relief, sculpture, monument, tablet, fountain, or other article or structure of a permanent character intended for decoration or commemoration. This section, however, shall not apply to markers set up by the Board of Transportation in cooperation with the Department of Environment, Health, and Natural Resources and the Department of Cultural Resources as provided by Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 48; c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1306, ss. 3, 4; 1989, c. 727, s. 218(27).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development" in the last sentence.

§ 100-8. Memorials to persons within 25 years of death; acceptance of commemorative funds for useful work.

Editor's Note. — Session Laws 1993, c. 561, s. 38 provides that, notwithstanding this section, of the funds appropriated by Chapter 561 to the Department of Cultural Resources for Somerset Place for the 1993-94 fiscal year, $2,000 be allocated to provide an appropriate memorial at Somerset Place.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 3.

Mount Mitchell Park.

§ 100-11. Duties.

The Department of Environment, Health, and Natural Resources shall have complete control, care, protection and charge of that part of Mitchell's Park acquired by the State. (1915, c. 76; 1919, c. 316, s. 3; C.S., s. 6940; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(28).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development".

§ 100-12. Roads, trails, and fences authorized; protection of property.

The Department of Environment, Health, and Natural Resources is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails and protect the property against trespass and fire and injury of any and all kinds whatsoever; cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally. (1919, c. 316, s. 5; C.S., s. 6942; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(29).)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "Environment, Health, and Natural Resources" for "Natural Resources and Community Development".

§ 100-13. Fees for use of improvements; fees for other privileges; leases; rules.

The Department of Environment, Health, and Natural Resources is further authorized to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules as may best tend to protect, preserve and increase the value and attractiveness of the park. (1921, c. 222, s. 2; C.S., s. 6942(a); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 25.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, substituted "rules" for "rules and regulations" in the catchline; near the beginning of the section, substituted "Department of Environment, Health, and Natural Resources" for "Department of Natural Resources and Community Development" and deleted "and empowered" following "is further authorized"; and deleted "and regulations" following "necessary rules" near the end of the section.

§ 100-14. Use of fees and other collections.

All fees and other money collected and received by the Department of Environment, Health, and Natural Resources in connection with its proper administration of the North Carolina State Parks System shall be used by said Department for the administration, protection, improvement, and maintenance of the State Parks System. (1921, c. 22, s. 3; C.S., s. 6942(b); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 26.)

Effect of Amendments. — The 1989 amendment, effective July 1,1989, substituted "Department of Environment, Health, and Natural Resources" for "Department of Natural Resources and Community Development" and "the North Carolina State Parks System" for "Mount Mitchell State Park," deleted "of Natural Resources and Community Development" following "by said Department," and substituted "the State Parks System" for "said park".

§ 100-15. Annual reports.

The Department shall make an annual report to the Governor of all money received and expended by it in the administration of the North Carolina State Parks System, and of such other items as may be called for by him or by the General Assembly. (1921, c. 222, s. 4; C.S., s. 6942(c); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 27.)

Effect of Amendments. — The 1989 amendment, effective July 1, 1989, deleted "of Natural Resources and Community Development" following "The Department," and substituted "the North Carolina State Parks System" for "Mount Mitchell State Park".

Chapter 101.

Names of Persons.

Sec.
101-6. Effect of change; only one change, except as provided.

Sec.
101-8. Resumption of name by widow or widower.

§ 101-1. Legislature may regulate change by general but not private law.

OPINIONS OF ATTORNEY GENERAL

The Division of Motor Vehicles does not have the authority to establish a policy to require documented proof from the Register of Deeds or official court documents for a name change on driver licenses and identification cards as the only method of establishing a name change. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 4 (1988).

§ 101-2. Procedure for changing name; petition; notice.

Cross References. — As to amendment of birth and death certificates, see § 130A-118.

§ 101-5. Clerk to order change; certificate and record.

OPINIONS OF ATTORNEY GENERAL

The Division of Motor Vehicles does not have the authority to establish a policy to require documented proof from the Register of Deeds or official court documents for a name change on driver licenses and identification cards as the only method of establishing a name change. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, 58 N.C.A.G. 4 (1988).

§ 101-6. Effect of change; only one change, except as provided.

(a) When the order is made and the applicant's name changed, he is entitled to all the privileges and protection under his new name as he would have been under the old name. No person shall be allowed to change his name under this Chapter but once, except that he shall be permitted to resume his former name upon compliance with the requirements and procedure set forth in this Chapter for change of name, and except as provided in subsection (b) of this section.

(b) For good cause shown, and upon compliance with the requirements and procedure set forth in this Chapter for change of name, the name of a minor child may be changed not more than two times under this Chapter. (1891, c. 145; Rev., ss. 2147, 2149; C.S., s. 2975; 1945, c. 37, s. 2; 1991, c. 333, s. 1.)

Effect of Amendments. — The 1991 amendment, effective June 19, 1991, added "except as provided" in the catchline, inserted the subsection designation (a), added "and except as provided in subsection (b) of this section" in subsection (a), and added subsection (b).

§ 101-8. Resumption of name by widow or widower.

A person at any time after the person is widowed may, upon application to the clerk of court of the county in which the person resides setting forth the person's intention to do so, resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband in the case of a widow, or his premarriage surname in the case of a widower. The application shall set forth the full name of the last spouse of the applicant, shall include a copy of the spouse's death certificate, and shall be signed by the applicant in the applicant's full name. The clerks of court of the several counties of this State shall record and index such applications in the manner required by the Administrative Office of the Courts. (1979, c. 768; 1981, c. 564, s. 2; 1993 (Reg. Sess., 1994), c. 565, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in the first sentence substituted "person" for "woman," substituted "the person" for "she," and substituted "widowed may, upon application to the clerk of court of the county in which the person resides setting forth the person's intention to do so, resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband in the case of a widow, or his premarriage surname in the case of a widower" for "widowed, may resume the use of her maiden name or the name of a prior deceased husband or of a previously divorced husband upon application to the clerk of superior court of the county in which she resides, setting forth her intention to do so"; and in the second sentence substituted "spouse" for "husband," substituted "the spouse's" for "his," and substituted "the applicant's" for "her."

Chapter 102.

Official Survey Base.

Sec.
102-4. (Effective October 1, 1994 — See editor's note) Damaging, defacing, or destroying monuments.

§ 102-4. (Effective October 1, 1994 — See editor's note) Damaging, defacing, or destroying monuments.

If any person shall willfully damage, deface, destroy, or otherwise injure a station, monument or permanent mark of the North Carolina Coordinate System, or shall oppose any obstacles to the proper, reasonable, and legal use of any such station or monument, such person shall be guilty of a Class 1 misdemeanor. (1939, c. 163, s. 4; 1993, c. 539, s. 683; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and shall be liable to fine or imprisonment at the discretion of the court".

Chapter 103.

Editor's Note. — The legislation and annotations affecting Chapter 103 have been included in a recently published replacement chapter.

Chapter 104.

United States Lands.

ARTICLE 1.

Authority for Acquisition.

§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

CASE NOTES

Jurisdiction Is a Federal Question. — Whether the United States has acquired jurisdiction over land it owns is a federal question. State v. Smith, 328 N.C. 161, 400 S.E.2d 405, cert. denied, — U.S. —, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Federal Acquisition of Jurisdiction Over Territory. — The federal government must acquire state land by condemnation or otherwise. If the state in which the land is situated cedes jurisdiction to the federal government, and if the government accepts jurisdiction, the state no longer has jurisdiction over this territory. State v. Smith, 328 N.C. 161, 400 S.E.2d 405, cert. denied, — U.S. —, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Jurisdiction on Camp Lejeune Reservation. — It appears that the State ceded all jurisdiction on the Camp Lejeune reservation that it could, except for the service of process. State v. Smith, 328 N.C. 161, 400 S.E.2d 405, cert. denied, — U.S. —, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

North Carolina lacked jurisdiction to try a person as an adult for murders he allegedly committed as a juvenile on the Camp Lejeune military reservation. State v. Smith, 328 N.C. 161, 400 S.E.2d 405, cert. denied, — U.S. —, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Chapter 104A.

Degrees of Kinship.

§ 104A-1. Degrees of kinship; how computed.

Cross References. — As to meaning of "next of kin," see § 41-6.1.

Editor's Note. — The case of In re Will of Cobb, 271 N.C. 307, 156 S.E.2d 285 (1967), cited under this section in the main volume, has been abrogated by statute. See § 41-6.1.

Chapter 104D.

Southern States Energy Compact.

Sec.
104D-2. (For applicability see note) Appointment of North Carolina members and alternate members of Southern States Energy Board.

§ 104D-2. (For applicability see note) Appointment of North Carolina members and alternate members of Southern States Energy Board.

(a) North Carolina members of the Southern States Energy Board shall be appointed as follows:

(1) One member to be appointed by the Governor.
(2) One member of the House of Representatives to be appointed by the Speaker of the House of Representatives.
(3) One member of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) Members shall serve at the pleasure of the original appointing authority and until their successors are appointed.

(c) Each appointing authority is authorized to appoint an alternate member who may serve at and for such time as the regular member shall designate and shall have the same power and authority as the regular member when so serving. (1965, c. 858, s. 2; 1983, c. 282, s. 2; 1991, c. 739, s. 9.)

Editor's Note. — Session Laws 1991, c. 739, which amended this section, in s. 34 provided: "This act applies to any appointments for terms beginning on or after January 1, 1993, and also applies to the filling of any unexpired terms where the term began before that date but the vacancy occurs on or after that date." See the "Effect of Amendments" note.

Effect of Amendments. — The 1991 amendment, applicable to any appointments for terms beginning on or after January 1, 1993, and to the filling of any unexpired terms where the term began before that date but the vacancy occurs on or after that date, inserted "Pro Tempore" in subdivision (a)(3).

Chapter 104E.

North Carolina Radiation Protection Act.

§ 104E-23. (See editor's note for date change) Penalties; injunctive relief.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 104E-29. (See editor's note for date change) Confidential information protected.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 104F.

Southeast Interstate Low-Level Radioactive Waste Management Compact.

Sec.
104F-2.1. Restrictions on importing waste from outside the compact.

Sec.
104F-3. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

§ 104F-1. Compact entered into; form of Compact.

CASE NOTES

Cited in Richmond County v. North Carolina Low-Level Radioactive Waste Mgt. Auth., 335 N.C. 77, 436 S.E.2d 113 (1993).

§ 104F-2.1. Restrictions on importing waste from outside the compact.

The North Carolina members of the Southeast Interstate Low-Level Radioactive Waste Management Commission appointed under G.S. 104F-2 shall not vote in favor of importing waste into the North Carolina regional facility from any person, state, or similar regional body or group of states, or foreign country, outside the compact under G.S. 104F-1, Article IV(e) without prior approval from the North Carolina General Assembly. (1993, c. 501, s. 5.1.)

Editor's Note. — Session Laws 1993, c. 501, s. 31 made this section effective upon ratification. The act was ratified July 23, 1993.

§ 104F-3. (Effective October 1, 1994 — See editor's note) Violation a misdemeanor.

Violation of the provisions of this compact by any person not an official of another state is a Class 1 misdemeanor. (1983, c. 714, s. 2; 1993, c. 539, s. 687; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

Chapter 104G.

Editor's Note. — The legislation and annotations affecting Chapter 104G have been included in a recently published replacement chapter.

Chapter 105.

Taxation.

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105-23. Personal representative to file return.

Article 2.

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105-33.1. Definitions.
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105-86. Outdoor advertising.
105-88. Loan agencies or brokers.
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105-99. (Effective October 1, 1994 — See editor's note) Wholesale distributors of motor fuels.

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Article 2A.

Schedule B-A. Tobacco Products Tax.

Part 1. General Provisions.

105-113.4. Definitions.

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105-113.12. Distributor must obtain license.
105-113.13. Secretary may investigate applicant for distributor's license and require a bond.
105-113.18. Payment of tax; reports.
105-113.19, 105-113.20. [Repealed].
105-113.21. Discount; refund.

Sec.
105-113.22, 105-113.23. [Repealed].
105-113.24. Out-of-State distributors to register and remit tax.
105-113.25. [Repealed.]
105-113.26. Records to be kept.
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105-113.28. [Repealed.]
105-113.31. Possession and transportation of non-tax-paid cigarettes; seizure and confiscation of vehicle or vessel.
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105-113.33. (Effective October 1, 1994 — See editor's note) Criminal penalties.
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Schedule B-B. Soft Drink Tax.

105-113.44. Definitions.
105-113.45. Excise taxes on soft drinks and base products.
105-113.46. Exemptions.
105-113.47. Registration of certain exempt bottled soft drinks and juice concentrates.
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Schedule B-C. Alcoholic Beverage License and Excise Taxes.

Part 1. General Provisions.

105-113.68. Definitions; scope.
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105-113.82. (Effective until July 1, 1995) Appropriation of amount equal to part of beer and wine taxes.
105-113.82. (Effective July 1, 1995) Distribution of part of beer and wine taxes.

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Schedule B-D. Controlled Substance Tax.

105-113.106. Definitions.

Sec.
105-113.112. (Effective October 1, 1994 — See editor's note) Confidentiality of information.

Article 3.

Schedule C. Franchise Tax.

105-114. Nature of taxes; definitions.
105-116. Franchise or privilege tax on electric power, natural gas, water, and sewerage companies.
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Article 4.

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105-130.32. Credit against corporate income tax for installation of solar energy equipment for the production of heat or electricity in certain processes.
105-130.37. Credit for gleaned crop.
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105-130.41. (For expiration date see note) Credit for North Carolina State Ports Authority wharfage and handling charges on exports.
105-130.42. Credit for rehabilitating an historic structure.

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105-134.1. Definitions.
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Division III. Income Tax—Estates, Trusts, and Beneficiaries.

105-160.7. When tax must be paid.
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Division V. Tax Credits for Qualified Business Investments.

105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.
105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.

Sec.
105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.
105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.
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Article 4A.

Withholding of Income Taxes from Wages and Payment of Income Tax by Individuals.

105-163.1. Definitions.
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Article 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

105-163.38. Definitions.
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Cited in County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

ARTICLE 1.

Schedule A. Inheritance Tax.

§ 105-2.1. Internal Revenue Code definition.

As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90. (1983, c. 713, s. 62; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 1; 1989, c. 36, s. 1; 1989 (Reg. Sess., 1990), c. 981, s. 1; 1991, c. 689, s. 249; 1991 (Reg. Sess., 1992), c. 922, s. 1; 1993, c. 12, s. 2.)

Effect of Amendments. — The 1993 amendment, effective for taxable years beginning on or after January 1, 1993, substituted "has the same meaning as in G.S. 105-228.90" for "means the Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date".

§ 105-23. Personal representative to file return.

(a) Return Required. — Every personal representative of a decedent who dies intestate shall prepare a return showing as far as can be ascertained the names of all the heirs-at-large and their relationship to the decedent. Every personal representative of a decedent who dies testate shall prepare a return, accompanied by a copy of the will, showing the relationship to the decedent of all legatees, distributees, and devisees named in the will, and the age at the time of the death of the decedent of all legatees, distributees, and devisees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent. Each return shall include the post-office address of the personal representative. The return shall also contain a complete inventory of all the real property of the decedent located in and outside the State, and of all personal property, wherever situate, of the estate, and of all insurance policies upon the life of the decedent, together with an appraisal under oath or affirmation of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by law, so far as they may be ascertained at the time of filing the return; and also the full statement of all gifts or advancements made by deed, grant, or sale to any person or corporation, in trust or otherwise, within three years prior to the death of the decedent. This return shall be filed with the Secretary of Revenue at Raleigh, North Carolina, within nine months after the qualification of the personal representative upon blank forms to be prepared by the Secretary of Revenue. A personal representative who fails or refuses to comply with any of the requirements of this section, shall be personally liable for a penalty of five hundred dollars ($500.00). This penalty does not apply, however, if no tax is due on the estate under this Article. The Secretary of Revenue, for good cause shown, may remit all or any portion of the penalty imposed under this section. Every personal representative may make a tentative settlement of the inheritance tax with the Secretary of Revenue, based on the inventory supported by oath or affirmation provided in this section. If any personal representative or other fiduciary within or without this State holding or having control of any funds, property, trust or estate, the transfer of which becomes taxable under the provisions of this Article, fails to file the return required by this section within the time required by this section, the Secretary of Revenue shall obtain the required information from the best sources available and, based on this information, shall assess the tax due and any applicable penalties.

(b) Exception. — An inheritance tax return is not required to be filed for an estate that meets all of the following conditions:

(1) Its beneficiaries are all either Class A beneficiaries, as described in G.S. 105-4(a), or the surviving spouse.

(2) Its gross value, including the value of transfers over which the decedent retained an interest and the value of gifts made within three years before the decedent's death, as provided in G.S. 105-2(a)(3), is less than four hundred fifty thousand dollars ($450,000).

(1939, c. 158, s. 21; 1947, c. 501, s. 1; 1951, c. 643, s. 1; 1971, c. 1054, s. 4; 1973, c. 476, s. 193; 1979, c. 801, s. 24; 1981 (Reg. Sess., 1982), c. 1221, s. 2; 1985, c. 82, s. 2; c. 656, s. 3.1; 1985 (Reg. Sess., 1986), c. 822, s. 2; 1993, c. 362, s. 1; c. 371, s. 1; c. 485, s. 3.)

Effect of Amendments. — Session Laws 1993, c. 362, s. 1, effective July 1, 1993, and applicable to estates of decedents dying on or after that date, in subsection (b), substituted "105-2(a)(3)," for "105-2(3),"; under "Estates of Decedents Dying On or After", deleted "July 1, 1985", "August 1, 1985", "July 1, 1986" and added "July 1, 1993"; under "Gross Value of Estates", deleted "$100,000", "75,000", "150,000", added "450,000" and made related changes.

Session Laws 1993, c. 371, s. 1, effective for estates of decedents dying on or after October 1, 1993, rewrote the section catchline; in subsection (a) substituted "personal representative of a decedent who dies intestate" for "administrator", substituted "return" for "statement" and substituted "the decedent. Every personal representative of a decedent who dies testate" for "decedent, and every executor"; in the present second sentence, substituted "return" for "like statement", substituted "and devisees" for "devisees" and substituted "decedent. Each return shall include" for "decedent, together with"; in the present third sentence, substituted "the personal representative" for "executor, administrator, or trustee"; deleted the former fourth sentence which read "If any of the heirs at law, distributees, and devisees are minor children of the decedent, such statement shall also show the age of each of such minor children."; in the present fourth sentence substituted "return" for "statement", inserted "and" preceding "of all insurance policies", substituted "law" for "this statute" and substituted "such statement" for "the return"; in the present fifth sentence, substituted "This return" for "The statement herein provided for" and substituted "personal representative" for "executor or administrator"; in the present sixth sentence, substituted "A personal representative who" for "If any administrator or executor" and substituted "shall be personally liable for a penalty of five hundred dollars ($500.00)" for "he shall be liable to a penalty in the sum of five hundred dollars ($500.00), to be recovered by the Secretary of Revenue to collect such sum in the Superior Court of Wake County against such administrator or executor"; added the present seventh sentence; in the present eighth sentence, deleted "the provisions of" preceding "this section"; in the present ninth sentence, substituted "personal representative" for "executor or administrator"; in the present tenth sentence, substituted "personal representative or" for "executor, administrator, collector, committee, trustee or any" and substituted "fails to file the return required by this section within the time required by this section, the Secretary of Revenue shall obtain the required information from the best sources available and, based on this information, shall assess the tax due and any applicable penalties" for the former language at the end of that sentence; in subsection (b), substituted "that meets all of the following conditions" for "(i) whose"; added the subdivision designations; in subdivision inserted "Its" at the beginning, deleted "and (ii) whose"; in subdivision (b)(2), substituted "105-2(a)(3)" for "105-2(3)" and substituted "two hundred fifty thousand dollars ($250,000)" for "the amount specified in the following table" and the table providing a gross estate value of $100,000 for estates of decedents dying on or after July 1, 1985; $75,000 for August 1, 1985; $150,000 for July 1, 1986; and $250,000 for January 1, 1987.

Session Laws 1993, c. 485, s. 3, effective July 23, 1993, in subsection (b) as amended by Session Laws 1993, cc. 362 and 371, substituted "four hundred fifty thousand dollars ($450,000)" for "two hundred fifty thousand dollars ($250,000)" in subdivision (b)(2), and deleted "$", "July 1, 1993", and "450,000" at the end.

ARTICLE 2.

Schedule B. License Taxes.

§ 105-33. Taxes under this Article.

(a) Taxes in this Article or schedule shall be imposed as State license taxes for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.

(b) If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required. For the purpose of this Article, a specialty market is not considered a specialty market vendor's place of business.

(c) Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(d) The State license issued under G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-58, and 105-91 shall be and constitute a personal privilege to conduct the profession or business named in the State license, shall not be transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article or schedule. Other license issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at such location for the balance of the tax year: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars ($5.00) for each license certificate reissued.

(e) Repealed by Session Laws 1989, c. 584, s. 1.

(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.

(h) It shall be the duty of a grantee, transferee, or purchaser of any business or property subject to the State license taxes imposed in this Article to make diligent inquiry as to whether the State license tax has been paid, but when such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State license taxes imposed under this Article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such State license taxes.

(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.

(j) **(Effective October 1, 1994 — See editor's note)** Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.

(k) Repealed by Session Laws 1987, c. 190. (1939, c. 158, s. 100; 1943, c. 400, s. 2; 1951, c. 643, s. 2; 1953, c. 981, s. 1; 1963, c. 294, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1981, c. 83, ss. 1, 2; 1985, c. 114, s. 10; 1985 (Reg. Sess., 1986), c. 826, ss. 1, 2; c. 934, s. 3; 1987, c. 190; 1989, c. 584, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 1; 1991 (Reg. Sess., 1992), c. 981, s. 1; 1993, c. 539, s. 688; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — Town of Pittsboro: 1993, c. 358, s. 9(a).

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor", and substituted "which may include a fine which" for "and upon conviction shall be fined and/or imprisoned in the discretion of the court, which fine" in subsection (j).

§ 105-33.1. Definitions.

The following definitions apply in this Article:

(1) Code. — Defined in G.S. 105-228.90.

(2) Municipality. — A municipal corporation organized under the laws of this State.

(3) Person. — Defined in G.S. 105-228.90.

(4) Secretary. — The Secretary of Revenue. (1991, c. 45, s. 1; 1991 (Reg. Sess., 1992), c. 922, s. 2; 1993, c. 12, s. 3; c. 354, s. 6.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 12, s. 3, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date".

Session Laws 1993, c. 354, s. 6, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or another organization or group acting as a unit" in subdivision (3).

§ 105-41. Attorneys-at-law and other professionals.

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. The tax for each license is fifty dollars ($50.00); the tax does not apply to an individual who is at least 75 years old.

(1) An attorney-at-law.
(2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.
(3) A professional engineer, as defined in G.S. 89C-3.
(4) A registered land surveyor, as defined in G.S. 89C-3.
(5) An architect.
(6) A landscape architect.
(7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.
(8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.
(9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.
(10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.

(b) Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars ($50.00), and in addition shall pay a license of twelve dollars and fifty cents ($12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in the employ of another, and pay for such license a tax of fifty dollars ($50.00).

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or corporation: Provided, that a licensed photographer having a located place of business in this State, shall be liable for a license tax on each agent or solicitor, employed by him for soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, such person shall be liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commission having authority of law in this State with respect to the granting or continuing of license to practice any such profession.

(h) Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State. (1939, c. 158, s. 109; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1949, c. 683; 1953, c. 1306; 1957, c. 1064; 1973, c. 476, s. 193; 1981, c. 17; c. 83, ss. 4, 5; 1989, c. 584, s. 7; 1991 (Reg. Sess., 1992), c. 974, s. 1; 1993, c. 419, s. 13.2.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1994, substituted "G.S. 93E-1-4," for G.S. 93A-72." in subdivision (a)(9).

§ 105-50. Pawnbrokers.

(a) Every person, firm, or corporation engaged in and conducting the business of lending or advancing money or other things of value for a profit, and taking as a pledge for such loan specific articles of personal property, to be forfeited if payment is not made within a definite time, shall be deemed a pawnbroker, and shall pay for the privilege of transacting such business an annual license tax of two hundred seventy-five dollars ($275.00).

(b) Before such pawnbroker shall receive any article or thing of value from any person or persons, on which a loan or advance is made, he shall issue a duplicate ticket, one to be delivered to the owner of said personal property and the other to be attached to the article, and said ticket shall have an identifying number on the one side, together with the date at the expiration of which the pledger forfeits his right to redeem, and on the other a full and complete copy of this subsection; but such pawnbroker may, after the pledger has forfeited his right to redeem the specific property pledged, sell the same at public auction, deducting from the proceeds of sale the money or fair value of the thing advanced, the interest accrued, and the cost of making sale, and shall pay the surplus remaining to the pledger.

(c) **(Effective October 1, 1994 — See editor's note)** Any person, firm, or corporation transacting the business of pawnbroker without a license as provided in this section, or violating any of the provisions of this section, shall be guilty of a Class 3 misdemeanor and fined only not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00).

(d) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of that levied by the State. (1939, c. 158, s. 118; 1989, c. 584, s. 11; 1993, c. 539, s. 689; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" preceding "not less than fifty dollars" in subsection (c).

§ 105-53. (See editor's note) Peddlers, itinerant merchants, and specialty market operators.

(a) Peddler. — Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A "peddler" is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars ($25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars ($10.00) for each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars ($25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. — Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars ($100.00) for each county in which he is engaged in business. An "itinerant merchant" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant's license is not required to engage in the business of a specialty market vendor at a location licensed as a specialty market under subsection (c) of this section or at a specialty market that is exempt from the license requirement under subsection (c) because the specialty market operator is the State or a unit of local government. A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or the destruction of his inventory by fire or other catastrophe.

(c) Specialty Market Operator. — Every person, other than the State or a unit of local government, engaged in business as a specialty market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of two hundred dollars ($200.00) for each county in which he is engaged in business. A "specialty market operator" is a person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Specialty Market Vendor. — The requirements and penalties set out in subsections (i) through (m) of this section apply to every person engaged in business as a specialty market vendor who is liable for retail sales tax under Article 5 of this Chapter. A "specialty market vendor" is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A "specialty market" is a location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

(e) Exemptions. — This section does not apply to the following:

- (1) A peddler or itinerant merchant:
  - a. Who sells farm or nursery products produced by him;
  - b. Who sells crafts or goods made by him or his own household personal property;
  - c. Who is a nonprofit charitable, educational, religious, scientific, or civic organization;
  - d. Who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or
  - e. Who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
  - a. Who locates at a farmer's market;
  - b. Who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
  - c. Who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.

(f) Person Defined. — As used in this section, "person" has the same meaning as in G.S. 105-164.3(11).

(g) County Exemption. — The board of county commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied upon peddlers and itinerant merchants in this section disabled veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to sell within the limits of the county without payment of any license tax to the State.

(h) Repealed by Session Laws 1989, c. 435, s. 1.

(i) Display and Possession of Licenses and Identification. — An itinerant merchant shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor shall keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator shall have the license required by this section available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, itinerant merchant, specialty market operator, or specialty market vendor shall provide its name and permanent address. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is not a corporation, he shall, upon the request of any customer, State or local revenue agent, or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is a corporation, it shall, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

(i1) Records of Source of New Merchandise. — Each peddler, itinerant merchant, and specialty market vendor shall keep a record of the source of new merchandise the merchant offers for sale. The record may be a receipt or an invoice from the person who sold the merchandise to the merchant or any other documentation that establishes the source of the merchandise. The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. If the merchant fails to produce the requested record and the law enforcement agent has probable cause to believe the merchant's possession of the merchandise is unlawful, the agent may take the merchandise into custody as evidence. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1.

(j) Permission of Property Owner. — An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) Specialty Market Registration List. — A specialty market operator shall maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. This registration list shall clearly and legibly show each specialty market vendor's name, permanent address, and retail sales and use tax registration number. The specialty market operator shall require each specialty market vendor to exhibit a valid retail sales tax license for visual inspection by the specialty market operator at the time of registration, and shall require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this subsection shall be retained by the specialty market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(*l*) Misdemeanor Violations. — It shall be a Class 3 misdemeanor for a person to do any of the following:

(1) Fail to obtain a license as required by this section.

(2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k).

(3) If the person is an itinerant merchant, fail to display the license as required by subsection (i); if the person is a peddler or specialty market operator, fail to produce the license as required by subsection (i); or, if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, or specialty market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been

issued prior to the time he was charged with such violation.

(4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.

(5) Fail to keep a record of the source of new merchandise offered for sale as required by subsection (i1).

(*l*1) Additional Misdemeanor Violations. — It shall be a Class 3 misdemeanor, which may include a fine of up to one thousand dollars ($1,000), for a specialty market operator to fail to comply with subsection (k) or for a specialty market vendor to fail to display the retail sales tax license as required by subsection (i). For the purposes of this section, the requirement that a retail sales tax license be displayed is satisfied if the vendor displays either (i) a copy of the license or (ii) evidence that the license has been applied for and the applicable license fee has been paid within 30 days before the date the license was required to be displayed. Whenever satisfactory evidence shall be presented in any court of the fact that display of a retail sales tax license was required by this section and such license was not displayed, the specialty market operator or vendor shall not be found guilty of that violation provided he produces in court a valid license which had been issued prior to the time he was charged with the violation.

(m) Local License. — Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. Further, this section does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, specialty market vendors, or specialty market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178. (1939, c. 158, s. 121; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1951, c. 643, s. 2; 1955, c. 1315; 1973, c. 476, s. 193; 1979, c. 74; 1981, c. 16; 1987, c. 213, s. 1; c. 708, ss. 1-6; 1987 (Reg. Sess., 1988), c. 1081, s. 2; 1989, c. 435; 1989 (Reg. Sess., 1990), c. 814, s. 3; 1993, c. 539, ss. 690, 691; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 731, s. 1.)

Local Modification. — Town of Pittsboro: 1993, c. 358, s. 9(a).

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 539, s. 390, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (*l*) substituted "Class 3 misdemeanor" for "misdemeanor, punishable by imprisonment of up to 30 days, a fine of up to two hundred dollars ($200.00), or both"; and in subsection (*l*1) substituted "Class 3 misdemeanor, which may include a fine of up to one thousand dollars ($1,000)" for "misdemeanor, punishable by imprisonment of up to 30 days, a fine of up to one thousand dollars ($1,000), or both".

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to offenses committed on or after that date, added subsection (i1); in subsection (*l*) substituted "Misdemeanor Violations" for "Penalty," added "do any of the following"; in subdivision (*l*)(3) twice substituted "(i);" for "(i) or"; added subdivision (*l*)(5); made stylistic changes; and in subsection (*l*1) substituted "Misdemeanor Violations" for "Penalties."

§ 105-77. Tobacco warehouses.

(a) Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of July of each year, apply for and obtain from the Secretary of Revenue a State license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of July:

Less than 1,000,000 pounds	$ 50.00
1,000,000 pounds and less than 2,000,000	75.00
2,000,000 pounds and less than 3,000,000	175.00
3,000,000 pounds and less than 4,000,000	250.00
4,000,000 pounds and less than 5,000,000	400.00
5,000,000 pounds and less than 6,000,000	500.00

For all in excess of 6,000,000 pounds, five hundred dollars ($500.00) and six cents (6¢) per thousand pounds.

(b) If a new warehouse not in operation the previous year, the person, firm, or corporation operating such warehouse may procure a license by payment of the minimum tax provided in the foregoing schedule, and at the close of the season for sales of tobacco in such warehouse shall furnish the Secretary of Revenue a statement of the number of pounds of tobacco sold in such warehouse for the current year, and shall pay an additional license tax for the current year based on such total volume of sales in accordance with the schedule in this section.

If an old warehouse with new or changed ownership or management, the tax shall be paid according to the schedule in this section, based on the sale during the preceding year, just as if the old ownership or management had continued its operation.

(c) The Commissioner of Agriculture shall certify to the Secretary of Revenue, on or before the first day of July of each year, the name of each person, firm, or corporation operating a tobacco warehouse in each county in the State, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each warehouse for the preceding year, ending on the first day of July of the current year.

(d) The Commissioner of Agriculture shall report to the district attorney of any prosecutorial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of July of the current year, and such district attorney shall prosecute any such person, firm or corporation under the provisions of this section.

(e) The tax levied in this section shall be based on official reports of each tobacco warehouse to the State Department of Agriculture showing amount of sales for each warehouse for the previous year.

(f) The Secretary of Revenue or his deputies shall have the right, and are hereby authorized, to examine the books and records of any person, firm, or corporation operating such warehouse, for the purpose of verifying the reports made and of ascertaining the number of pounds of leaf tobacco sold during the preceding year, or other years, in such warehouse.

(g) **(Effective October 1, 1994 — See editor's note)** Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties provided for in this Article, be guilty of a Class 1 misdemeanor.

(h) No county shall levy any license tax on the business taxed under this section. Cities and towns may levy a tax not in excess of fifty dollars ($50.00) for each warehouse. (1939, c. 158, s. 142; 1963, c. 294, s. 4; 1973, c. 476, s. 193; 1987 (Reg. Sess., 1988), c. 1037, s. 107; 1993, c. 539, s. 692; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be fined not less than five hundred dollars ($500.00) and/or imprisoned, in the discretion of the court" in subsection (g).

§ 105-86. Outdoor advertising.

(a) Every person, firm or corporation engaged in the business of outdoor advertising by placing, erecting or maintaining one or more outdoor advertising signs or structures of any nature by means of signboards, poster boards, or painted bulletins, or other painted matter, or any other outdoor advertising devices, erected upon the grounds, walls or roofs of buildings, shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business in this State, and shall pay annually for said license as follows:

For posting or erecting 20 or more signs or panels	$25.00
For posting or erecting less than 20 signs or panels, for each sign or panel	1.00

And in addition thereto the following license tax for each city, town or other place in which such signboards, poster boards, painted bulletins and other painted or printed matter or other outdoor advertising devices are maintained:

For each city or town, without regard to population ...	$70.00
In each county outside of cities and towns	25.00

Provided, that the tax levied in this section shall not apply to regularly licensed motion picture theatres taxed under G.S. 105-37 upon any advertising signs, structures, boards, bulletins, or other devices erected by or placed by the theatre upon property which the theatre has secured by permission of the owner.

Every person, firm, or corporation who or which places, erects or maintains one or more outdoor advertising signs, structures, boards, bulletins or devices as specified in this section shall be deemed to be engaged in the business of outdoor advertising, but when the applicant intends to advertise his own business exclusively by the erection or placement of such outdoor advertising signs, structures, boards, bulletins or devices as specified in this section, he may be licensed to do so upon the payment annually of one dollar ($1.00) for each sign up to 1,000 in number, and for 1,000 or more, the sum of one thousand dollars ($1,000) for the privilege in lieu of all other taxation as provided in this section, except such further taxation as may be imposed upon him by cities or towns, acting under the power to levy not in excess of one half of that specified in paragraph two of this subsection.

(b) Every person, firm, or corporation shall show in its application for the State license herein provided for the name of each incorporated city or town within which, and the county within which, it is maintaining or proposes to maintain said signboards, poster boards, painted bulletins or other painted or printed signs or other outdoor advertising devices within the State of North Carolina. No person, firm, or corporation, licensed under the provisions of this section, shall erect or maintain any outdoor advertising structure, device or display until a permit for the erection of such structure, device or display shall have been obtained from the Secretary of Revenue. Application for such permit shall be in writing, signed by the applicant or his duly authorized agent, upon blanks furnished by the Secretary of Revenue, in such form and requiring such information as said Secretary of Revenue may prescribe. Each application shall have attached thereto the written consent of the owners or duly authorized agent of the property on which structures, device or display is to be erected or maintained, and shall state thereon the beginning and ending dates of such written permission: Provided, the subsection shall not apply to persons, firms, or corporations who or which advertise their or its own business exclusively, and who or which have been licensed therefor pursuant to subsection (a) of this section.

(c) **(Effective October 1, 1994 — See editor's note)** It shall be unlawful for any person engaged in the business of outdoor advertising to in any manner paint, print, place, post, tack or affix, or cause to be painted, printed, placed, posted, tacked or affixed any sign or other printed or painted advertisement on or to any stone, tree, fence, stump, pole, building or other object which is upon the property of another without first obtaining the written consent of such owner thereof, and any person, firm, or corporation who in any manner paints, prints, places, posts, tacks or affixes, or causes to be painted, printed, posted, tacked or affixed any such advertisement on the property of another except as herein provided shall be guilty of a Class 3 misdemeanor: Provided, that the provisions of this section shall not apply to legal notices.

(d) It shall be unlawful for any person, firm, or corporation to paint, print, place, post, tack or affix any advertising matter within the limits of the right-of-way of public highways of the State without the permission of the Department of Transportation, or upon the streets of the incorporated towns of the State without permission of the governing authorities, and if and when signs of any nature are placed without permission within the highways of the State, or within the streets of incorporated towns, it shall be the duty of the Department of Transportation or any other administrative body or other governing authorities of the cities and towns of said State to remove said advertising matters therefrom.

(e) Every person, firm, or corporation owning or maintaining signboards, poster boards, printed bulletins, or other outdoor advertisements of any nature within this State shall have imprinted on the same the name of such person, firm, or corporation in sufficient size to be plainly visible and permanently affixed thereto.

(f) A license shall not be granted any person, firm, or corporation having his or its principal place of business outside the State for the display of any advertising of any nature whatsoever, designed or intended for the display of advertising matter, until such person, firm, or corporation shall have furnished and filed with the Secretary of Revenue a surety bond to the State, approved by him, in such sum as he may fix, not exceeding five thousand dollars ($5,000), conditioned that such licensee shall fulfill all requirements of law, and lawful regulations and orders of said Secretary of Revenue, relative to the display of advertisements. Such surety bond shall remain in full force and effect as long as any obligations of such licensee to the State shall remain unsatisfied.

(g) No advertising, or other signs specified in this section, shall be erected in the highway right-of-way so as to obstruct the vision or otherwise to increase the hazards, and all signs upon the highways shall be placed in a manner to be approved by the said Department of Transportation.

(h) Any person, firm, or corporation who or which shall refuse to or neglect to comply with the terms and provisions of this section, and who shall fail to pay the tax herein provided for within 30 days after the same shall become due, or who shall paint, print, place, post, tack, affix or display any advertising sign or other matter contrary to the provisions of this section, the Department of Transportation of the State of North Carolina or other governing body having jurisdiction over the roads and highways of the State, and the governing authorities of cities and towns and its agents and employees, and the board of county commissioners of the various counties of said State and its employees are directed to forthwith seize and remove or cause to be removed all advertisements, signs or other matter displayed contrary to the provisions of this section.

For the purpose of more effectually carrying into effect the provisions of this section, the Secretary of Revenue is authorized and directed to prepare and furnish to the Department of Transportation or other governing body having jurisdiction over the roads and highways of the State a sufficient number of permits to be executed by the owner, lessee or tenant occupying the lands adjacent to the highways of the State, upon which advertisements, signs or other matter displayed contrary to the provisions of this section, in words as follows:

"I, (we), (owner), (lessee), (tenant), authorize and direct the Department of Transportation of the State of North Carolina to remove from my lands the following signs and advertising matter placed upon my lands unlawfully or without my permission: ....
....

"This .... day of ...., 19...."

And the said Department of Transportation or other governing body having jurisdiction over the roads and highways of the State shall forthwith proceed, through its agents, servants and employees, wherever and whenever in its opinion it is necessary to secure the consent to the removal of said signs or other advertising matter from the lands of the owner, lessee or tenant, to secure said consent and to immediately remove said signs or other advertising matter from the lands adjacent to the highways of the State of North Carolina as herein directed.

(i) **(Effective October 1, 1994 — See editor's note)** Every person, firm, or corporation who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor in addition to the license tax and penalties provided for herein.

(j) Counties shall not levy any license tax under this section, but cities and towns may levy a license tax not in excess of one half of that levied by the State under paragraph two of subsection (a).

(k) The following signs and announcements are exempted from the provisions of this section: Signs upon property advertising the business conducted thereon; notice or advertisements erected by public authority or required by law in any legal proceedings; any signs containing 60 square feet or less bearing an announcement of any town or city advertising itself: Provided, the same is maintained at public expense.

No tax shall be levied under this section against any person, firm, or corporation erecting, painting, posting or otherwise displaying signs or panels advertising his or its own business containing 12 square feet or less of advertising surface: Provided, that this exemption shall not apply if the signs or panels are displayed in more than five counties. (1939, c. 158, s. 151; 1943, c. 400, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 193; c. 507, s. 5; 1977, c. 464, s. 34; 1989, c. 584, s. 26; 1993, c. 539, ss. 693, 694; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor, and shall be punished by a fine not exceeding fifty dollars ($50.00), or imprisonment of 30 days" in subsection (c); and in subsection (i) substituted "Class 1 misdemeanor" for "misdemeanor, and", and deleted "shall be fined not more than one hundred dollars ($100.00) for each sign so displayed, or imprisoned, in the discretion of the court".

§ 105-88. Loan agencies or brokers.

(a) Every person, firm, or corporation engaged in the regular business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).

(b) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, or cooperative credit unions, nor shall it apply to the business of negotiating loans on real estate as described in G.S. 105-41, nor to pawnbrokers lending or advancing money on specific articles of personal property, nor to insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker shall be required to obtain a privilege license under this section merely because he advances his own funds and takes a security interest in real estate to secure such advances and when, at the time of such advance of his own funds, he has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount such obligation within the period specified in said arrangement or extensions thereof; or when, at the time of the advance of his own funds, he intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of said obligation and does sell the obligation within the period specified in said arrangement or extensions thereof; or because he advances his own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above shall be required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the same, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, and the time in which said amount is to be paid, and the rate of interest and discount agreed upon.

(d) **(Effective October 1, 1994 — See editor's note)** Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double the tax due. No such loan shall be collectible at law in the courts of this State in any case where the person making such loan has failed to pay the tax levied herein, and/or otherwise complied with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00). (1939, c. 158, s. 152; 1967, c. 1080; c. 1232, s. 2; 1973, c. 476, s. 193; 1991, c. 45, s. 4; 1993, c. 539, s. 695; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (d) substituted "Class 1 misdemeanor" for "misdemeanor, and" preceding "in addition to", and deleted "shall be fined not less than two hundred and fifty dollars ($250.00) and/or imprisoned, in the discretion of the court".

§ 105-90. Emigrant and employment agents.

(a) Every person, firm, or corporation, either as agent or principal, engaged in the business of soliciting, hiring, and/or contracting with laborers, male or female, in this State, for employment out of the State shall apply for and obtain from the Secretary of Revenue a State license for each county for the privilege of engaging in such business, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in which such business is carried on.

(b) Every person, firm, or corporation who or which engages in the business of securing employment for a person or persons and charging therefor a fee, commission, or other compensation shall apply for and obtain from the Secretary of Revenue a State license for the privilege of engaging in such business in this State, and shall pay for such license an annual tax of three hundred dollars ($300.00) for each location in which such business is carried on.

Provided, that this section shall not apply to any employment agency operated by the federal government, the State, any county or municipality, or whose sole business is procuring employees for work in the production and harvesting of farm crops within the State, nor shall it apply to any registry for registered nurses or licensed practical nurses when not operated for profit. And provided further, that under this section the tax on any employment agency whose sole business is the placement of teachers and/or other school employees shall be fifty dollars ($50.00): Provided further, that the tax on employment agencies where the sole business is the placement of domestic servants or unregistered nurses for employment within the State shall be fifty dollars ($50.00).

(c) **(Effective October 1, 1994 — See editor's note)** Any person, firm, or corporation violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

(d) Counties, cities and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00). (1939, c. 158, s. 154; 1945, c. 635; 1963, c. 787, s. 1; 1971, c. 1130; 1973, c. 476, s. 193; 1987 (Reg. Sess., 1988), c. 1082, s. 6; 1989, c. 584, s. 29; 1993, c. 539, s. 696; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and fined, in addition to other penalties, not less than one thousand dollars ($1,000) and/or imprisoned, in the discretion of the court" in subsection (c).

§ 105-99. (Effective October 1, 1994 — See editor's note) Wholesale distributors of motor fuels.

Every person, firm, or corporation engaged in the business of distributing or selling at wholesale any motor fuels in this State shall apply to the Secretary for an additional annual license to engage in such business, and shall pay for such privilege an additional annual license tax determined and measured by the number of pumps owned or leased by the distributor or wholesaler through which such motor fuels are sold, at retail, according to the following schedule:

For the first 50 pumps	$ 2.00 per pump
For 51 additional pumps and not more than 100 pumps	4.00 per pump
For 101 additional pumps and not more than 200 pumps	5.00 per pump
For 201 additional pumps and not more than 300 pumps	6.00 per pump
For 301 additional pumps and not more than 400 pumps	7.00 per pump
For 401 additional pumps and not more than 500 pumps	8.00 per pump
For 501 additional pumps and not more than 600 pumps	9.00 per pump
For all over 600 pumps	10.00 per pump

In computing the tax, the number of pumps owned or leased by a distributor or wholesaler is considered the number of dispensing nozzles from which motor fuel can be dispensed simultaneously.

Any contract or agreement, oral or written, express or implied by the terms or the effects of which the tax herein imposed shall be passed on directly or indirectly to any person, firm, or corporation not engaged in the business hereby taxed is hereby declared to be against the public policy of this State and null and void, and any person, firm, or corporation negotiating such an agreement, or receiving the benefits thereof, shall be guilty of a Class 1 misdemeanor.

The tax herein imposed shall be in addition to all other taxes imposed by this Chapter or under any other laws.

Counties, cities and towns shall not levy any tax by reason of the additional tax imposed by this section, but this section shall in no way affect the right given to counties, cities, and towns to levy taxes under G.S. 105-89.

The business taxed under this section shall not be taxed under G.S. 105-98. (1939, c. 158, s. 162½; 1963, c. 1169, s. 12; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 985, s. 3; 1993, c. 539, s. 697.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and fined or imprisoned in the discretion of the court" in the third paragraph.

DIVISION I. ADMINISTRATIVE PROVISIONS OF SCHEDULE B.

§ 105-109. Engaging in business without a license.

(a) All State license taxes under this Article or schedule, unless otherwise provided for, shall be due and payable annually on or before the first day of July of each year, or at the date of engaging in such business, trade, employment and/or profession, or doing the act.

(b) **(Effective October 1, 1994 — See editor's note)** If any person, firm, or corporation shall continue the business, trade, employment, or profession, or to do the act, after the expiration of a license previously issued, without obtaining a new license, he or it shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than twenty percent (20%) of the tax in addition to the tax and the costs; and if such failure to apply for and obtain a new license be continued, such person, firm, or corporation shall pay additional tax of five per centum (5%) of the amount of the State license tax which was due and payable on the first day of July of the current year, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax, and shall become a part of the State license tax. The penalties for delayed payment hereinbefore provided shall not impair the obligation to procure a license in advance or modify any of the pains and penalties for failure to do so.

The provisions of this section shall apply to taxes levied by the counties of the State under authority of this Article in the same manner and to the same extent as they apply to taxes levied by the State.

(c) **(Effective October 1, 1994 — See editor's note)** If any person, firm, or corporation shall commence to exercise any privilege or to promote any business, trade, employment, or profession, or to do any act requiring a State license under this Article without such State license, he or it shall be guilty of a Class 1 misdemeanor; and if such failure, neglect, or refusal to apply for and obtain such State license be continued, such person, firm, or corporation shall pay an additional tax of five per centum (5%) of the amount of such State license tax which was due and payable at the commencement of the business, trade, employment or profession, or doing the act, in addition to the State license tax imposed by this Article, for each and every 30 days, or fraction thereof, that such State license tax remains unpaid from the date that same was due and payable, and such additional tax shall be assessed by the Secretary of Revenue and paid with the State license tax and shall become a part of the State license tax.

(d) If any person, firm, or corporation shall fail, refuse, or neglect to make immediate payment of any taxes due and payable under this Article, additional taxes, and/or any penalties imposed pursuant thereto, upon demand, the Secretary of Revenue shall certify the same to the sheriff of the county in which such delinquent lives or has his place of business, and such sheriff shall have the power and shall levy upon any personal or real property owned by such delinquent person, firm, or corporation, and sell the same for the payment of the said tax or taxes, penalty and costs, in the same manner as provided by law for the levy and sale of property for the collection of other taxes, and if sufficient property is not found, the said sheriff or deputy commissioner shall swear out a warrant for the violation of the provisions of this Article and as provided in this Article.

(e) The provisions of this section for the collection of delinquent license taxes shall apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the State and counties of this State: Provided, the municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section. (1939, c. 158, s. 187; 1957, c. 859; 1963, c. 294, s. 5; 1973, c. 108, s. 51; c. 476, s. 193; 1993, c. 539, ss. 698, 699; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor, which may include a fine which" for "misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court, but the fine" in subsection (b); and substituted "Class 1 misdemeanor" for "misdemeanor, and shall be fined and/or imprisoned in the discretion of the court" in subsection (c).

ARTICLE 2A.

Schedule B-A. Tobacco Products Tax.

Part 1. General Provisions.

§ 105-113.4. Definitions.

The following definitions apply in this Article:

(1) Cigar. — A roll of tobacco wrapped in a substance that contains tobacco, other than a cigarette.

(1a) Cigarette. — Any of the following:

a. A roll of tobacco wrapped in paper or in a substance that does not contain tobacco.

b. A roll of tobacco wrapped in a substance that contains tobacco and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subpart a. of this subdivision.

(2) Cost price. — The price a person liable for the tax on tobacco products imposed by Part 3 of this Article paid for

the products, before any discount, rebate, or allowance or the tax imposed by that Part.

(3) Distributor. — Either of the following:
  a. A person, wherever resident or located, who purchases non-tax-paid cigarettes directly from the manufacturer of the cigarettes and stores, sells, or otherwise disposes of the cigarettes.
  b. A person who manufactures or produces cigarettes or causes them to be manufactured or produced.

(4) Repealed by Session Laws 1991, c. 689, s. 267.

(5) Licensed distributor. — A distributor licensed under Part 2 of this Article.

(6) Manufacturer. — A person who manufactures or produces tobacco products.

(7) Package. — The individual packet, can, box, or other container used to contain and to convey tobacco products to the consumer.

(8) Person. — Defined in G.S. 105-228.90.

(9) Retail dealer. — A person who sells a tobacco product to the ultimate consumer of the product.

(10) Sale. — A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(10a) Secretary. — The Secretary of Revenue.

(11) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(11a) Tobacco product. — A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(13) Use. — The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.

(14) Wholesale dealer. — A person who makes tobacco products other than cigarettes or who acquires tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991, c. 689, s. 267; 1993, c. 354, s. 7; c. 442, s. 1.)

Editor's Note. —

Session Laws, 1993, c. 354, s. 29 is a severability clause.

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

Session Laws 1993, c. 354, s. 7, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit" in subdivision (8).

Session Laws 1993, c. 442, s. 1, effective January 1, 1994, in subdivision (3) substituted "Either of the following" for "Any"; added the subdivision designations (3)a. and (3)b.; in subdivision (3)a. added at the beginning "A", substituted "non-tax-paid" for "unstamped", substituted "of the cigarettes and stores, sells," for "thereof and stores, sells", substituted "cigarettes" for "same; and also any" at the end; in subdivision (3)b. added at the beginning "A"; deleted former subdivision (11), defining stamp; and deleted former subdivision (12), defining unstamped.

Part 2. Cigarette Tax.

§ 105-113.6. Use tax levied.

A tax is levied upon the sale or possession for sale by a person other than a distributor, and upon the use, consumption, and possession for use or consumption of cigarettes within this State at the rate set in G.S. 105-113.5. This tax does not apply, however, to cigarettes upon which the tax levied in G.S. 105-113.5 has been paid. (1969, c. 1075, s. 2; 1993, c. 442, s. 2.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, rewrote this section.

§ 105-113.9. Out-of-state shipments.

Any distributor engaged in interstate business shall be permitted to set aside part of the stock as necessary to conduct interstate business without paying the tax otherwise required by this Part, but only if the distributor complies with the requirements prescribed by the Secretary concerning keeping of records, making of reports, posting of bond, and other matters for administration of this Part.

"Interstate business" as used in this section means:

(1) The sale of cigarettes to a nonresident where the cigarettes are delivered by the distributor to the business location of the nonresident purchaser in another state; and

(2) The sale of cigarettes to a nonresident wholesaler or retailer registered through the Secretary who has no place of business in North Carolina and who purchases the cigarettes for the purposes of resale not within this State and where the cigarettes are delivered to the purchaser at the business location in North Carolina of the distributor who is also licensed as a distributor under the laws of the state of the nonresident purchaser. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1977, c. 874; 1993, c. 442, s. 3.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the introductory paragraph substituted "part of the stock as necessary to conduct" for "such part of his stock as may be necessary for the conduct of such", substituted "otherwise required by this Part, but only if the distributor" for "or affixing the stamps otherwise required by this Article, but only if such distributor", substituted "requirements prescribed by the Secretary" for "regulations and administrative rules", substituted "bond, and other matters for administration of this Part" for "bond and such other rules and regulations as may be promulgated by the Secretary for the administration of this Article"; and in the beginning of the second paragraph substituted "means" for "shall mean".

§ 105-113.10. Manufacturers shipping to distributors exempt.

Any manufacturer shipping cigarettes to other distributors who are licensed under G.S. 105-113.12 may, upon application to the Secretary and upon compliance with requirements prescribed by the Secretary, be relieved of paying the taxes levied in this Part. No manufacturer may be relieved of the requirement to be licensed as a distributor in order to make shipments, including drop shipments, to a retail dealer or ultimate user. (1969, c. 1075, s. 2; c. 1246, s. 2; 1973, c. 476, s. 193; 1975, c. 275, s. 2; 1993, c. 442, s. 4.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, substituted "under G.S. 105-113.12" for "to affix stamps as provided in this Article", substituted "requirements prescribed" for "such regulations and administrative rules in regard thereto as may be promulgated", substituted "paying the taxes levied in this Part. No" for "the requirement of paying the taxes and affixing the stamps required by this Article, but no", and deleted the former last sentence, which read "However, the Secretary may permit monthly reports from the manufacturer instead of requiring stamps to be affixed to packages of free cigarettes given as complimentary samples by the manufacturer, but only if the package has been imprinted with the word 'State tax paid'".

§ 105-113.12. Distributor must obtain license.

(a) A distributor shall obtain for each place of business a continuing distributor's license and shall pay a tax of twenty-five dollars ($25.00) for the license.

(b) For the purposes of this section, a "place of business" is a place where a distributor receives or stores non-tax-paid cigarettes.

(c) An out-of-state distributor may obtain a distributor's license upon compliance with the provisions of G.S. 105-113.24 and payment of a tax of twenty-five dollars ($25.00). (1969, c. 1075, s. 2; 1991 (Reg. Sess., 1992), c. 955, s. 4; 1993, c. 442, s. 5.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1993 amendment, effective January 1, 1994, in subsection (b) substituted "a 'place of business' is a place" for "'place of business' means any place", deleted "unstamped packages of cigarettes are received or stored by", and substituted "receives or stores non-tax-paid cigarettes" for "for the purposes of affixing stamps thereto, and any place where a distributor actually affixes stamps to unstamped packages of cigarettes".

§ 105-113.13. Secretary may investigate applicant for distributor's license and require a bond.

(a) Investigation. — The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:

(1) That the applicant has willfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.

(2) That information submitted with the application is false or misleading.

(3) That the application is not made in good faith.

(b) Bond. — The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 5; 1993, c. 442, s. 6.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

The 1993 amendment, effective January 1, 1994, substituted the present last three sentences for the former last sentence, which read "A bond shall be executed by the distributor as principal and by an indemnity company licensed to do business under the insurance laws of this State as surety".

§ 105-113.18. Payment of tax; reports.

The taxes levied in this Part are payable when a report is required to be filed. The following reports are required to be filed with the Secretary:

(1) Distributor's Report. — A distributor shall file a monthly report in the form prescribed by the Secretary. The report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the amount of tax due and shall identify any transactions to which the tax does not apply.

(1a) Report of Free Cigarettes. — A manufacturer who distributes cigarettes without charge shall file a monthly report in the form prescribed by the Secretary. The report covers cigarettes distributed without charge in a calendar month and is due within 20 days after the end of the month covered by the report. The report shall state the number of cigarettes distributed without charge and the amount of tax due.

(2) Use Tax Report. — Every other person who has acquired non-tax-paid cigarettes for sale, use, or consumption subject to the tax imposed by this Part shall, within 96 hours after receipt of the cigarettes, file a report in the form prescribed by the Secretary showing the amount of cigarettes so received and any other information required by the Secretary. The report shall be accompanied by payment of the full amount of the tax.

(3) Shipping Report. — Any person, except a licensed distributor, who transports cigarettes upon the public highways, roads, or streets of this State, upon notice from the Secretary, shall file a report in the form prescribed by the Secretary and containing the information required by the Secretary.

(4) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1209, s. 1. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1981 (Reg. Sess., 1982), c. 1209, s. 1; 1993, c. 442, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 2.)

Editor's Note. — Session Laws 1993, c. 442, s. 14 provides: "The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the pruchase of the stamps by the taxpayer."

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the title to this section substituted "Payment of tax; reports" for "Reports"; added the first sentence; substituted present subdivision (1) for former subdivision (1); added subdivision (1a); in subdivision (2) substituted "non-tax-paid cigarettes for sale, use, or" for "unstamped cigarettes for sale, use or", substituted "Part" for "Article", substituted "the cigarettes, file" for "same, complete and file, in such form as the Secretary shall prescribe", inserted "in the form prescribed by the Secretary", substituted "any other information required by the Secretary. The report shall be accompanied by payment" for "such other information as the Secretary shall prescribe. Said report shall by accompanied by a remittance"; and in subdivision (3) substituted "roads," for "roads", and substituted "the form prescribed by the Secretary and containing the information required by the Secretary" for "such form, on such dates, and containing such information as the Secretary shall prescribe".

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (3) added the subdivision catchline.

§§ 105-113.19, 105-113.20: Repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Editor's Note. — Session Laws 1993, c. 442, s. 14 provides: "The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the purchase of the stamps by the taxpayer."

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-113.21. Discount; refund.

(a) Discount. — A distributor who files a timely report under G.S. 105-113.18 may deduct from the amount due with the report a discount of four percent (4%). This discount covers expenses incurred in preparing the records and reports required by this Part, and the expense of furnishing a bond.

(b) Refund. — A distributor in possession of packages of stale or otherwise unsalable cigarettes upon which the tax has been paid may return the cigarettes to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by an affidavit from the manufacturer stating the number of cigarettes returned to the manufacturer by the applicant. The Secretary shall refund the tax paid on the unsalable cigarettes, less the discount allowed, to the applicant. (1969, c. 1075, s. 2; cc. 1222, 1238; 1973, c. 476, s. 193; 1993, c. 442, s. 9.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1993, c. 442, s. 14 provides: "The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the purchase of the stamps by the taxpayer."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, rewrote this section.

§§ 105-113.22, 105-113.23: Repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-113.24. Out-of-State distributors to register and remit tax.

(a) The Secretary may authorize any distributor outside this State engaged in the business of selling and shipping cigarettes into the State to obtain a license and report and pay taxes required by this Part.

(b) A nonresident distributor must agree to submit the distributor's books, accounts, and records to reasonable examination by the Secretary or the Secretary's duly authorized agents. The Secretary may require a nonresident distributor to file a bond in accordance with G.S. 105-113.13.

(c) Each such nonresident distributor, other than a foreign corporation which has qualified with the Secretary of State as doing business in this State shall, by a duly executed instrument filed in the office of the Secretary of State, constitute and appoint the Secretary of State his lawful attorney in fact upon whom any original process in any action or legal proceeding against such nonresident distributor arising out of any matter relating to this Article may be served, and therein agree that any original process against him so served shall be of the same force and effect as if served on him within this State, and that the authority thereof shall continue in force irrevocably so long as any such nonresident distributor shall remain liable for any taxes, interest and penalties under this Article.

(d) Any nonresident distributor who shall comply with the provisions of this section may be licensed as a distributor. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1991 (Reg. Sess., 1992), c. 955, s. 9; 1993, c. 442, ss. 9.1(a), 9.1(b).)

Editor's Note. — Session Laws 1993, c. 442, s. 14 provides: "The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the purchase of the stamps by the taxpayer."

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the title to this section substituted "Out-of state distributors to register and remit tax" for "Sale of stamps to out-of-state distributors"; and rewrote subsection (a).

§ 105-113.25: Repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Editor's Note. — Session Laws 1993, c. 442, s. 14 provides: "The Secretary of Revenue shall redeem any unused or mutilated but identifiable tax stamps purchased pursuant to Article 2 of Chapter 105 of the General Statutes that a taxpayer presents for redemption and shall refund the face value of the stamps less the discount allowed at the time of the purchase of the stamps by the taxpayer."

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-113.26. Records to be kept.

Every person required to be licensed under this Article and every person required to make reports under this Article shall keep complete and accurate records of all sales and other information as required under this Article. The records shall be in the form prescribed by the Secretary.

These records shall be safely preserved for a period of three years in a manner to ensure their security and accessibility for inspection by the Department. The Secretary may consent to the destruction of any records at any time within this three-year period. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 10.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the first paragraph substituted "other information as required under this Article" for "such other information as is required under this Article"; substituted "The records shall be in the form prescribed by the Secretary" for "The kind and form of such records may be prescribed by the Secretary and all records shall be kept as to be adequate to enable him to determine any tax liability"; in the second paragraph substituted "These records" for "All such records", substituted "in a manner to ensure" for "such a manner to insure", substituted "Department" for "Secretary or his duly authorized agents", and substituted "may consent to the destruction of any records at any time wihton this three-year period" for "may, in his discretion, consent to the destruction of any such records at any time within said period".

§ 105-113.27. Non-tax-paid cigarettes.

(a) Except as otherwise provided in this Article, licensed distributors shall not sell, borrow, loan, or exchange non-tax-paid cigarettes to, from, or with other licensed distributors.

(b) No person shall sell or offer for sale non-tax-paid cigarettes.

(c) The possession of more than six hundred cigarettes bearing the tax stamp of another state or country, by any person other than a licensed distributor, shall be prima facie evidence that the cigarettes are possessed in violation of this Part. (1969, c. 1075, s. 2; 1993, c. 442, s. 11.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the title to this section substituted "Non-tax-paid" for "Unstamped"; in subsection (a) substituted "loan, or exchange non-tax-paid cigarettes to, from, or" for "loan or exchange unstamped cigarettes to, from or"; in subsection (b) substituted "non-tax-paid" for "unstamped"; in subsection (c) substituted "cigarettes bearing the tax stamp of another state or country" for "unstamped cigarettes", and substituted "the cigarettes are possessed in violation of this Part" for "such cigarettes are possessed in violation of the provisions of this Article".

§ 105-113.28: Repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-113.31. Possession and transportation of non-tax-paid cigarettes; seizure and confiscation of vehicle or vessel.

(a) It shall be unlawful for any person to transport non-tax-paid cigarettes in violation of this Part. The Secretary may adopt rules allowing quantities of non-tax-paid cigarettes, not exceeding six hundred, to be brought into this State by a transient, a tourist, or a person returning to this State after traveling outside this State, for their own use. The possession or transportation of these cigarettes is not subject to the penalties imposed by this section.

(b)(1) Every person who transports non-tax-paid cigarettes on the public highways, roads, streets, or waterways of this State must transport with the cigarettes invoices or delivery tickets for the cigarettes showing the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes transported, and the true name and complete and exact address of the person who has paid or who will pay the tax imposed by this Part or the tax, if any, of the state or foreign country at the point of ultimate destination.

(2) A common carrier that has issued a bill of lading for a shipment of cigarettes and is without notice to itself or to any of its agents or employees that the cigarettes are non-tax-paid in violation of this Part is considered to have complied with this Part and the vehicle or vessel in which the cigarettes are being transported is not subject to confiscation under this section. In the absence of the required invoices, delivery tickets, or bills of lading, the cigarettes so transported, the vehicle or vessel in which the cigarettes are being transported, and any paraphernalia or devices used in connection with the non-tax-paid cigarettes are declared to be contraband goods and may be seized by any officer of the law, who shall take possession of the vehicle or vessel and cigarettes and shall arrest any person in charge of the vehicle or vessel and cigarettes.

(3) The officer shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction; but the vehicle or vessel shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which bond shall be ap-

proved by the officer and shall be conditioned to return the property to the custody of the officer on the day of trial to abide the judgment of the court. All non-tax-paid cigarettes seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner.

(4) Unless the claimant can show that the non-tax-paid cigarettes seized were not transported in violation of this Part and that the property seized belongs to the claimant or that in the case of property other than cigarettes, the property was used in transporting non-tax-paid cigarettes in violation of this Part without the claimant's knowledge or consent, with the right on the part of the claimant to have a jury pass upon this claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the cost of the tax due, which the officer shall pay upon sale, expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens according to their priorities, which are established, by intervention or otherwise, at the hearing or in another proceeding brought for the purpose as being bona fide and as having been created without the lien or having any notice that the vehicle or vessel was being used for the unlawful transportation of non-tax-paid cigarettes, and shall pay the balance of the proceeds to the State Treasurer for the General Fund.

(5) All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one is found claiming the cigarettes, or the vehicle or vessel, then the taking of the cigarettes, vehicle, or vessel, along with a description, shall be advertised in a newspaper having circulation in the county where the items were taken, once a week for two weeks and by notices posted in three public places near the place of seizure, and if no claimant appears within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the State Treasurer for the General Fund.

(6) This section does not authorize an officer to search any vehicle or vessel or baggage of any person without a search warrant duly issued, except where the officer has knowledge that there are non-tax-paid cigarettes in the vehicle or vessel. (1969, c. 1075, s. 2; 1973, c. 476, s. 193; 1993, c. 442, s. 12.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the title to this section substituted "non-tax-paid" for "unstamped", and rewrote the section.

§ 105-113.32. Non-tax-paid cigarettes subject to confiscation.

All non-tax-paid cigarettes subject to the tax imposed by this Part, together with any container in which they are stored or displayed for sale (including but not limited to vending machines), are declared to be contraband goods and may be seized by any officer of the law. The officer shall arrest any person in charge of the contraband goods and shall at once proceed against the person arrested, under the provisions of this Part, in any court having competent jurisdiction. The disposition of the seized cigarettes and container shall be governed by the provisions of G.S. 105-113.31. (1969, c. 1075, s. 2; 1993, c. 442, s. 13.)

Editor's Note. — Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in the title to this section substituted "Non-tax-paid" for "Unstamped"; in the first sentence inserted "non-tax-paid", substituted "Part" for "Article, to which stamps have not been affixed as required by this Article", substituted "stored" for "stored,", substituted "machines)," for "machines)", substituted "law." for "law, who"; in the second sentence added "The officer", substituted "of the contraband goods and" for "thereof. Such officer", substituted "Part" for "Article", substituted "jurisdiction." for "jurisdiction and the"; in the third sentence added "The" at the beginning, substituted "the seized" for "said unstamped", and deleted "and controlled".

§ 105-113.33. (Effective October 1, 1994 — See editor's note) Criminal penalties.

Any person who violates any of the provisions of this Article for which no other punishment is specifically prescribed shall be guilty of a Class 1 misdemeanor. (1969, c. 1075, s. 2; 1993, c. 539, s. 700; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine or imprisonment or both in discretion of the court".

§ 105-113.34: Repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Editor's Note. — Session Laws 1993, c. 539, s. 1291, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), would have amended § 105-113.34, effective October 1, 1994, to designate the offense of forging or counterfeiting of revenue stamps a Class I felony. However, § 105-113.34 was repealed by Session Laws 1993, c. 442, s. 8, effective January 1, 1994.

Session Laws 1993, c. 442, s. 15 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

ARTICLE 2B.

Schedule B-B. Soft Drink Tax.

§ 105-113.44. Definitions.

The following definitions apply in this Article:

(1) Base product. The compound mixture or basic ingredients to which liquid milk or another liquid is added to complete a soft drink. The term includes a powder, a simple syrup, a chocolate syrup, other syrups, and a concentrate.

(2) Bottled. In a closed container of any kind.

(3) Distributor. A person who makes bottled soft drinks or base products or who acquires bottled soft drinks or base products for sale to a wholesale dealer or a retail dealer.

(4) Juice. Any of the following:
   a. The liquid that results from pressing fresh fruit or fresh vegetables.
   b. The concentrate produced by dehydrating a liquid described in subpart a.
   c. The liquid that results from adding water to a concentrate described in subpart b.

(5) Milk. Any of the following:
   a. Liquid milk, regardless of butterfat content.
   b. The powder produced by dehydrating liquid milk.
   c. The liquid that results from adding water to dehydrated liquid milk.

(6) Natural. — Without added ingredients of any kind other than vitamins, minerals, or ingredients extracted from an item and later returned to the item during the manufacturing process. Added ingredients include sugar, salt, preservatives, coloring, carbonation, and artificial flavoring.

(7) Person. — Defined in G.S. 105-228.90.

(8) Powder. Crystals, granules, tablets, and other dry products.

(9) Retail dealer. A person who sells bottled soft drinks or base products to the ultimate consumer or who makes soft drinks from base products and sells the soft drinks to the ultimate consumer.

(10) Sale. A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(11) Secretary. The Secretary of Revenue.

(12) Soft drink. A beverage that is not an alcoholic beverage, as defined in G.S. 105-113.68.

(13) Wholesale dealer. A person who sells bottled soft drinks or base products to another for resale. (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 2; 1979, c. 59, s. 2; 1991, c. 689, s. 275; 1991 (Reg. Sess., 1992), c. 955, s. 13; 1993, c. 354, s. 8.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit" in subdivision (7).

§ 105-113.45. Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. — An excise tax of one cent (1¢) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. — An excise tax at the rate of one dollar ($1.00) a gallon is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. — An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of one cent (1¢) an ounce if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276. (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1991, c. 689, s. 276; 1991 (Reg. Sess., 1992), c. 955, s. 14; 1993 (Reg. Sess., 1994), c. 745, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (c), in the first sentence, inserted "at the rate" and deleted "or four fifths of a cent (4/5¢) an ounce or a fraction of an ounce"; in the first sentence of subsection (c) and in the introductory language of subsection (d) inserted "each individual container of"; and in subdivision (d)(1) deleted "or a fraction of an ounce" preceding "if the dry base."

CASE NOTES

Cited in National Fruit Prod. Co. v. Justus, 112 N.C. App. 495, 436 S.E.2d 156 (1993).

§ 105-113.46. Exemptions.

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision (2), (3), or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

(1) A natural liquid milk drink produced by a farmer or a dairy.

(2) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1).

(3) Natural juice.

(3a) Juice that would be natural if it did not contain sugar.

(4) Natural water.

(5) A base product used to make a bottled soft drink subject to tax under this Article.
(6) Coffee or tea in any form.
(7) A bottled soft drink or base product sold outside the State.
(8) A bottled soft drink or base product sold to the federal government.
(9) A base product for domestic use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink. (1969, c. 1075, s. 3; 1991, c. 689, s. 277; 1991 (Reg. Sess., 1992), c. 955, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 38.2(a).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in the introductory language substituted "subdivision (2), (3), or (3a)" for "subdivision (2) or (3)"; and added subdivision (3a).

§ 105-113.47. Registration of certain exempt bottled soft drinks and juice concentrates.

(a) Requirement. — To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

(1) A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).
(2) A natural juice bottled soft drink.
(3) A natural juice concentrate.
(4) A juice concentrate or juice bottled soft drink that would be natural if it did not contain sugar.

(b) Determination. — The Secretary shall determine whether a bottled soft drink or a juice concentrate for which an application for registration is filed meets the criteria for exemption. To make the determination, the Secretary or a representative of the Secretary may require the person who filed the registration application for the item or anyone who sells the item in this State to provide a sample of the item and may have the sample analyzed by a chemist to verify the accuracy of the submitted formula.

(c) No Disclosure. — Except as required by law or allowed under this subsection, the Secretary or an agent or employee of the Secretary may not disclose part or all of the formula of an item for which an application for registration is filed. The Secretary may disclose whether an item meets the exemption criteria and the Attorney General or other legal representative of the State may examine the formula for an item if the grant or denial of an exemption for the item is challenged.

(d) Effect. — Registration as an exempt item applies prospectively to sales of the registered bottled soft drink or registered juice concentrate made on or after the date of registration. Registration does not relieve a person of liability for taxes due on sales made before the date an item is registered.

To register an item as exempt, the person who controls the brand name or formula of the item must file an application for registration with the Secretary on a form provided by the Secretary. An application must include an affidavit stating the complete and itemized formula by volume of the bottled soft drink or juice concentrate that is the subject of the application. (1969, c. 1075, s. 3; 1973,

c. 476, s. 193; 1991, c. 689, s. 278; 1993 (Reg. Sess., 1994), c. 745, s. 38.2(b).)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, added subdivision (a)(4).

CASE NOTES

The purpose of subsection (a) of this section is to keep otherwise exempt fruit or vegetable juice from being considered non-exempt solely because it contains sugar, salt or vitamins. National Fruit Prod. Co. v. Justus, 112 N.C. App. 495, 436 S.E.2d 156 (1993).

Juices Sold Under Other Labels or Brand Names Not Exempt. — Plaintiff, a large producer of fruit juice products, was not entitled to a "fruit juice" exemption under this section for juices sold under labels and brand names, including private label juice products, different from the one which it had registered for exemption. National Fruit Prod. Co. v. Justus, 112 N.C. App. 495, 436 S.E.2d 156 (1993).

§ 105-113.51. Liability for and payment of excise taxes.

(a) Liability. — The distributor, wholesale dealer, or retail dealer who first distributes, sells, consumes, or otherwise handles bottled soft drinks or base products in this State is liable for the tax imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State a bottled soft drink or base product made outside the State is the first person to handle the bottled soft drink or base product in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of a bottled soft drink or base product that is made outside the State and is shipped into the State is the first person to handle the bottled soft drink or base product in this State.

Presentation of a soft drink certificate of liability to a distributor or a wholesale dealer releases the distributor or wholesale dealer from liability under this subsection. Subsection (b) of this section governs who is liable when a soft drink certificate of liability is presented.

(b) Soft Drink Certificate of Liability. — A distributor, a wholesale dealer, or a retail dealer may apply to the Secretary for a soft drink certificate of liability. A distributor, a wholesale dealer, or a retail dealer who has a soft drink certificate of liability may purchase non-tax-paid bottled soft drinks or non-tax-paid base products from a distributor or a wholesale dealer by presenting the certificate to the distributor or wholesale dealer. Presentation of the certificate to a distributor or a wholesale dealer authorizes the distributor or wholesale dealer to sell non-tax-paid bottled soft drinks or non-tax-paid base products to the person who presents the certificate; it releases the distributor or wholesale dealer from liability for any tax due on the sale and transfers the liability to the person who presents the certificate.

A distributor or a wholesale dealer to whom a soft drink certificate of liability is presented must accept the certificate. A soft drink certificate of liability is considered to have been presented to a distributor or a wholesale dealer when the person to whom it is issued gives a copy of it to the distributor or wholesale dealer. When a person presents a soft drink certificate of liability to a distributor or a wholesale dealer, it indicates the person's intent that the certificate apply to all future sales to the person by the distributor or wholesale dealer. Once presented, a soft drink certificate of liability remains in effect until the person who presented the certificate gives the distributor or wholesale dealer to whom it was presented written notice that the certificate no longer applies.

(c) Monthly Report. — The taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 15 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 32, effective October 1, 1994.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 16, effective July 15, 1992. (1969, c. 1075, s. 3; c. 1247; 1973, c. 476, s. 193; 1979, c. 59, s. 3; 1991, c. 689, s. 281; 1991 (Reg. Sess., 1992), c. 955, s. 16; 1993 (Reg. Sess., 1994), c. 745, s. 32.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in subsection (a), in the subsection catchline deleted "primary" from the beginning, and added the second paragraph; rewrote subsection (b); in subsection (c), in the first sentence substituted "The" for "Except for tax on a designated sale under subsection (d), the"; and repealed subsection (d) regarding designation of exemption sale.

§ 105-113.52. Tax reduction and discount.

(a) Tax Reduction. — The tax on the first 15,000 gross of bottled soft drinks sold at wholesale on or after October 1 of each year by a distributor or wholesale dealer who is liable for the tax and who files a timely report under G.S. 105-113.51 is seventy-two cents (72¢) a gross rather than the amount stated in G.S. 105-113.45. The tax reduction does not apply to bottled soft drinks acquired by the distributor or wholesale dealer in a sale in which the distributor or wholesale dealer presented a soft drink certificate of liability, and it does not apply to sales made by a distributor or wholesale dealer who is not licensed as required by this Article. When reporting tax due on bottled soft drinks to which this reduced rate applies, a distributor or wholesale dealer shall pay the reduced amount.

(b) Discount. — A distributor, a wholesale dealer, or a retail dealer who is liable for the excise taxes on bottled soft drinks or base products and who files a timely report under G.S. 105-113.51 may deduct from the amount due with the report a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. The discount does not apply to taxes paid at the rate set in subsection (a). (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1991, c. 689, s. 282; 1993 (Reg. Sess., 1994), c. 745, s. 33.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in subsection (a), in the first sentence inserted "and who files a timely report under G.S. 105-113.51" and added the second sentence.

ARTICLE 2C.

Schedule B-C. Alcoholic Beverage License and Excise Taxes.

Part 1. General Provisions.

§ 105-113.68. Definitions; scope.

(a) Definitions. — As used in this Article, unless the context clearly requires otherwise:

(1) "ABC Commission" means the North Carolina Alcoholic Beverage Control Commission established under G.S. 18B-200.

(2) "ABC law" means a statute in this Article or in Chapter 18B or a rule issued by the Secretary under the authority of this Chapter.

(3) "ABC permit" means a written or printed authorization issued by the ABC Commission pursuant to Chapter 18B, other than a purchase-transportation permit. Unless the context clearly requires otherwise, "ABC permit" means a presently valid permit.

(4) "Alcoholic beverage" means a beverage containing at least one half of one percent (0.5%) alcohol by volume, including malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

(5) "Fortified wine" means a wine made by fermentation from grapes, fruits, berries, rice, or honey, to which nothing has been added other than pure brandy made from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine, and which has an alcoholic content of not more thân twenty-four percent (24%) alcohol by volume.

(6) "License" means a certificate, issued pursuant to this Article by the Secretary or by a city or county, that authorizes a person to engage in a phase of the alcoholic beverage industry.

(7) "Malt beverage" means beer, lager, malt liquor, ale, porter, and any other brewed or fermented beverage containing at least one half of one percent (0.5%) and not more than six percent (6%) alcohol by volume.

(8) "Person" has the same meaning as in G.S. 105-228.90.

(9) "Sale" means a transfer, trade, exchange, or barter, in any manner or by any means, for consideration.

(10) "Secretary" means the Secretary of Revenue.

(11) "Spirituous liquor" or "liquor" means distilled spirits or ethyl alcohol, including spirits of wine, whiskey, rum, brandy, gin, and all other distilled spirits and mixtures of cordials, liqueurs, and premixed cocktails in closed containers for beverage use regardless of the dilution.

(12) "Unfortified wine" means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume.

(13) "Wholesaler or importer" when used with reference to wholesalers or importers of wine or malt beverages includes resident wineries that sell their wines at retail and resident breweries that produce fewer than 310,000 gallons of malt beverages per year.

(14) "Wine" means unfortified and fortified wine.

(b) Scope. — All alcoholic beverages shall be taxed as provided in this Article regardless whether they meet all criteria of these definitions. (1971, c. 872, s. 2; 1973, c. 476, s. 193; 1975, c. 411, s. 1; 1981, c. 747, s. 2; 1985, c. 114, s. 1; c. 596, s. 3; 1993, c. 354, s. 9; c. 415, s. 26.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 354, s. 9, effective October 1, 1993, substituted "has the same meaning as in G.S. 105-228.90" for "means an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit" in subdivision (8).

Session Laws 1993, c. 415, s. 26, effective, July 20, 1993, substituted "310,000 gallons" for "62,000 gallons" in subdivision (a)(13).

§ 105-113.73. (Effective October 1, 1994 — See editor's note) Misdemeanor.

Except as otherwise expressly provided, violation of a provision of the ABC law is a Class 1 misdemeanor. (1939, c. 158, s. 525; 1971, c. 872, s. 2; 1981, c. 747, s. 32; 1985, c. 114, s. 1; 1993, c. 539, s. 701; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and is punishable as provided in G.S. 14-3".

Part 4. Excise Taxes, Distribution of Tax Revenue.

§ 105-113.82. (Effective until July 1, 1995) Appropriation of amount equal to part of beer and wine taxes.

(a) **(See note)** Amount, Method. — An amount equal to the following percentages of the net amount of excise taxes collected, during the period that began October 1, 1989, and ended September 30, 1990, on the sale of malt beverages and wine, less the amount of the net proceeds credited to the Department of Agriculture under G.S. 105-113.81A, is annually appropriated from the General Fund to the counties and cities in which the retail sale of these beverages is authorized:

§ 105-113.82 is set out twice. See notes.

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(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount appropriated, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount appropriated, that portion to be determined on the basis of population. The amount of the appropriation to be distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Reduction in Appropriation. — Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be appropriated to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be appropriated to the county under subsection (a) shall be based on population instead of area.

(c) Exception. — Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the amount appropriated shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. — The appropriation shall be distributed to cities and counties within 60 days after September 30 of each year.

(e) Population Estimates. — To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. — As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. — Funds appropriated to a county or city under this section may be used for any public purpose.

(h) Act. — The appropriation made by this section shall be included in the Current Operations Appropriations Act. (1985, c. 114, s. 1; 1987, c. 836, s. 2; 1989 (Reg. Sess., 1990), c. 813, s. 5; 1991, c. 689, s. 28(b); 1993, c. 485, s. 2.)

Section Set Out Twice. — The section above is effective until July 1, 1995. For the section as amended effective July 1, 1995, see the following section, also numbered § 105-113.82.

Editor's Note. —

Session Laws 1993, c. 561, s. 23(c) to (e) provides:

"(c) Notwithstanding the provisions of G.S. 105-113.82, the Secretary of Revenue shall reduce the amount to be distributed to counties and cities for the 1993-94 fiscal year pursuant to G.S. 105-113.82 by an amount equal to thirty-five percent (35%) of the amount to be transferred pursuant to subsection (a) of this section. The Secretary of Revenue shall allocate this reduction on a pro rata basis among the counties and cities entitled to receive a distribution pursuant to G.S. 105-113.82 for the 1993-94 fiscal year."

"(d) The General Assembly finds that the purpose of the allocation provided in this section is to meet the funding needs of local governments for water supply and wastewater treatment facilities, as requested by local governmental units."

"(e) This section becomes effective only if:

"(1) Senate Bill 14, which provides in part that a portion of the water and sewer bond proceeds may be used to make the match provided for in this section is not ratified in the 1993 Regular Session; or

"(2) Senate Bill 14 is ratified in the 1993 Regular Session but, after the election to be held in November 1993, the State Board of Elections certifies that a majority of those voting on the question of the issuance of water and sewer bonds in the election did not vote in favor of the issuance of the bonds."

Senate Bill 14, referred to in Section 23(e) of Chapter 561, was ratified as Session Laws 1993, c. 542 on July 24, 1993.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "State Planning Officer" for "State Budget Officer" in subsection (e).

§ 105-113.82. (Effective July 1, 1995) Distribution of part of beer and wine taxes.

(a) Amount, Method. — The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is authorized:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23¾%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

(b) Reduction in Amount Distributed. — Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is

§ 105-113.82 is set out twice. See notes.

authorized, the amount that would otherwise be distributed to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be distributed to the county under subsection (a) shall be based on population instead of area.

(c) Exception. — Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. — The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

(e) Population Estimates. — To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. — As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. — Funds distributed to a county or city under this section may be used for any public purpose. (1985, c. 114, s. 1; 1987, c. 836, s. 2; 1989 (Reg. Sess., 1990), c. 813, s. 5; 1991, c. 689, s. 28(b); 1993, c. 321, s. 26(g); c. 485, s. 2.)

Section Set Out Twice. — The section above is effective July 1, 1995. For the section as in effect until July 1, 1995, see the preceding section, also numbered § 105-113.82.

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 321, s. 26(g), effective July 1, 1995, rewrote this section.

ARTICLE 2D.

Schedule B-D. Controlled Substance Tax.

OPINIONS OF ATTORNEY GENERAL

If money or property is not seized as evidence of a controlled substance law violation, agents of the Department of Revenue may seize it for satisfaction of controlled substance excise taxes without an order from the court having jurisdiction over the criminal offense and without the district attorney's consent provided the seizure otherwise is made in compliance with law. See opinion of Attorney General to Secretary Janice H. Faulkner, — N.C.A.G. — (July 19, 1994).

§ 105-113.106. Definitions.

The following definitions apply in this Article:

(1) Controlled Substance. — Defined in G.S. 90-87.

(2) Counterfeit Controlled Substance. — Defined in G.S. 90-87.

(3) Dealer. — A person who in violation of G.S. 90-95 possesses, delivers, sells, or manufactures more than 42.5 grams of marijuana, or seven or more grams of any other controlled substance or counterfeit controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance or counterfeit controlled substance that is not sold by weight.

(4) Deliver. — Defined in G.S. 90-87.

(5) Manufacture. — Defined in G.S. 90-87.

(6) Marijuana. — Defined in G.S. 90-87.

(7) Person. — Defined in G.S. 105-228.90.

(8) Secretary. — The Secretary of the Department of Revenue. (1989, c. 772, s. 1; 1993, c. 354, s. 10.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual or an entity that identifies itself as an entity and exists for a purpose, including a corporation, firm, partnership, institution, or other unit" in subdivision (7).

§ 105-113.112. (Effective October 1, 1994 — See editor's note) Confidentiality of information.

Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports. (1989, c. 772, s. 1; 1993, c. 539, s. 702; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the second sentence.

ARTICLE 3.

Schedule C. Franchise Tax.

§ 105-114. Nature of taxes; definitions.

(a) Nature of Taxes. — The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 shall be for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article.

(b) Definitions. — The following definitions apply in this Article:

(1) Code. — Defined in G.S. 105-228.90.

(2) Corporation. — A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term does not include a limited liability company.

(3) Doing business. — Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. — Defined in G.S. 105-130.2(5). (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3; 1983, c. 713, s. 66; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c.

853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 2; 1989, c. 36, s. 2; 1989 (Reg. Sess., 1990), c. 981, s. 2; 1991, c. 30, s. 2; c. 689, s. 250; 1991 (Reg. Sess., 1992), c. 922, s. 3; 1993, c. 12, s. 4; c. 354, s. 11; c. 485, s. 5.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 12, s. 4, effective for taxable years beginning on or after January 1, 1993, substituted "has the same meaning as in G.S. 105-228.90" for "means the Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date" in subdivision (b)(1).

Session Laws 1993, c. 354, s. 11, effective October 1, 1993, in subsection (b) as amended by Session Laws 1993, c. 12, in subdivision (b)(1) substituted "Code—Defined in" for "The term 'Code' has the same meaning as"; in subdivision (b)(2) rewrote the definition of Corporation; in subdivision (b)(3) substituted "Doing business.—Each" for "The term 'doing business' shall mean and include each", substituted "power," for "power", and substituted "granted by the laws of this State" for "acquired by the nature of such organizations whether the form of existence be corporate, associate, joint stock company or common law trust".

Session Laws 1993, c. 485, s. 5, effective July 23, 1993, added the last paragraph of subsection (a).

§ 105-116. Franchise or privilege tax on electric power, natural gas, water, and sewerage companies.

(a) Tax. — An annual franchise or privilege tax is imposed on a person, firm, or corporation, other than a municipal corporation, that is:

(1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.

(2) A natural gas company engaged in the business of furnishing piped natural gas.

(3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.

(4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. — The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. An electric power company or a natural gas company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. An electric power company or a natural gas company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall include the company's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The company's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The company's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a municipality having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the company for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power company or a natural gas company, the company's gross receipts from the sale within each municipality of the commodities and services described in subsection (a).

A company shall report its gross receipts on an accrual basis.

(c) Gas Special Charges. — Gross receipts of a natural gas company do not include the following:

(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

(2) Natural gas expansion surcharges imposed under G.S. 62-158.

(d) **(Effective until July 1, 1995)** Appropriation. — There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived, from April 1, 1990, to March 31, 1991, by an electric power company and a natural gas company

§ 105-116(d) is set out twice. See notes.

from sales within the municipality of the commodities and services described in subsection (a). The Secretary of Revenue shall transfer the amount appropriated to a municipality in quarterly installments on or before September 15, December 15, March 15, and June 15 in proportion to the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(d) **(Effective July 1, 1995)** Distribution. — For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period by an electric power company and a natural gas company from sales within a municipality of the commodities and services described in subsection (a) of this section. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one-fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.

As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(e) Local Tax. — So long as there is a distribution to municipalities of the amount herein provided from the tax imposed by this section, no municipality shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment. (1939, c. 158, s. 203; 1949, c. 392, s. 2; 1951, c. 643, s. 3; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1965, c. 517; 1967, c. 519, ss. 1,

3; c. 1272, ss. 1, 3; 1971, c. 298, s. 1; c. 833, s. 1; 1973, c. 476, s. 193; c. 537, s. 3; c. 1287, s. 3; c. 1349; 1975, c. 812; 1983 (Reg. Sess., 1984), c. 1097, ss. 2, 16; 1987 (Reg. Sess., 1988), c. 882, s. 4.4; 1989 (Reg. Sess., 1990), c. 813, s. 3; c. 814, s. 10; c. 945, ss. 3, 17; 1991, c. 598, s. 4; c. 689, s. 28(c); 1991 (Reg. Sess., 1992), c. 1007, s. 2; 1993, c. 321, s. 26(h).)

Subsection (d) Set Out Twice — The first version of subsection (d) set out above is effective until July 1, 1995. The second version of subsection (d) set out above is effective July 1, 1995.

Editor's Note. —

Session Laws 1993, c. 321, s. 322 is a severability clause.

Session Laws 1993, c. 561, s. 23(a), effective contingent on disapproval of the issuance of water and sewer bonds at the November, 1993 election, provides:

"(a) Notwithstanding the provisions of Section 3 of Chapter 321 of the 1993 Session Laws, the Office of State Budget and Management shall transfer from the funds appropriated to the Reserve for Local Government Shared Tax Revenue for the 1993-94 fiscal year, to the Clean Water Revolving Loan and Grant Fund created in G.S. 159G-5, the amount necessary to match for the 1993-94 fiscal year the federal wastewater or water supply assistance funds deposited in the Clean Water Pollution Control Revolving Fund or another fund. The amount transferred pursuant to this subsection shall not, however, exceed the sum of six million eight hundred thousand dollars ($6,800,000)."

Session Laws 1993, c. 561, s. 23(b), (d) and (e) provide:

"(b) Notwithstanding the provisions of G.S. 105-116, the Secretary of Revenue shall reduce the amount to be transferred to municipalities on or before December 15, 1993, pursuant to G.S. 105-116(d), by an amount equal to sixty-five percent (65%) of the amount to be transferred pursuant to subsection (a) of this section. The Secretary of Revenue shall allocate this reduction on a pro rata basis among the municipalities entitled to receive a quarterly installment pursuant to G.S. 105-116(d) on or before December 15, 1993."

"(d) The General Assembly finds that the purpose of the allocation provided in this section is to meet the funding needs of local governments for water supply and wastewater treatment facilities, as requested by local governmental units."

"(e) This section becomes effective only if:

"(1) Senate Bill 14, which provides in part that a portion of the water and sewer bond proceeds may be used to make the match provided for in this section is not ratified in the 1993 Regular Session; or

"(2) Senate Bill 14 is ratified in the 1993 Regular Session but, after the election to be held in November 1993, the State Board of Elections certifies that a majority of those voting on the question of the issuance of water and sewer bonds in the election did not vote in favor of the issuance of the bonds."

Senate Bill 14, referred to in Section 23(e) of Chapter 561, was ratified as Session Laws 1993, c. 542 on July 24, 1993.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. —

The 1993 amendment, effective July 1, 1995, and applicable beginning with taxes collected during the calendar quarter ending June 30, 1995, rewrote subsection (d).

§ 105-120. Franchise or privilege tax on telephone companies.

(a) Tax. — An annual franchise or privilege tax is imposed on a person, firm, or corporation, that owns or operates a business entity for the provision of local telecommunications service. The tax is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts. A company's taxable gross receipts are its receipts from providing local telecommunications service, including receipts from rentals and other similar charges, less its receipts from telecommunications access charges. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) **(See note)** Report and Payment. — The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. A company that is liable for an average of less than three thousand dollars ($3,000) a month in tax imposed by this section may, with the approval of the Secretary of Revenue, pay tax quarterly when filing a report. All other companies shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A company is not subject to interest on or penalties for an underpayment of a monthly amount due if the company timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A company shall submit a report on a form provided by the Secretary. The report shall state the company's gross receipts for the reporting period from providing local telecommunications service and from providing local telecommunications service within each municipality served. A company shall report its gross receipts on an accrual basis.

(c) **(Effective until July 1, 1995)** Appropriation. — There is annually appropriated from the General Fund to each municipality an amount that equals three and nine hundredths percent (3.09%) of the taxable gross receipts derived, from April 1, 1990, to March 31, 1991, from local telecommunications service provided within the municipality. The Secretary of Revenue shall transfer the amount appropriated to a municipality in quarterly installments on or before September 15, December 15, March 15, and June 15 in proportion to the taxable gross receipts derived within the municipality during the preceding calendar quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary of Revenue shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality. Before transferring the amount appropriated by this subsection, the Secretary of Revenue shall certify the amount to be transferred to the State Controller. The appropriation made by this subsection shall be included in the Current Operations Appropriations Act.

As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(c) **(Effective July 1, 1995)** Distribution. — For the purpose of this subsection, the term "distribution amount" means three and nine hundredths percent (3.09%) of the taxable gross receipts derived during a period from local telecommunications service provided within a municipality. The Secretary shall distribute to each municipality the distribution amount for that municipality for the preceding calendar quarter less an amount equal to one-fourth of the excess of the distribution amount for that municipality for the period April 1, 1994, to March 31, 1995, over the distribution amount for that municipality for the period April 1, 1990, to March 31, 1991, as certified by the Secretary. The Secretary shall distribute the revenue within 75 days after the end of each quarter. If a company's report does not state the company's taxable gross receipts derived within a municipality, the Secretary shall determine a practical method of allocating part of the company's taxable gross receipts to the municipality.

As used in this subsection, the term "municipality" includes an urban service district defined by the governing board of a consolidated city-county. The amount due an urban service district shall be distributed to the governing board of the consolidated city-county.

(d) No Local Tax. — Counties and cities may not impose a license, franchise, or privilege tax on a company taxed under this section or under G.S. 105-164.4(a)(4c).

(e) Definitions. — For purposes of this section:

(1) "Local telecommunications service" means telecommunications service provided wholly within a LATA entitling the user to access to a local telephone exchange for the privilege of telephonic quality communication with substantially all persons in the local telephone exchange. Provided, however, local telecommunications service does not include intraLATA or interLATA toll telecommunications service, or private telecommunications service.

(2) "LATA" is a Local Access and Transport Area representing a geographical area comprising one or more telephone exchange areas.

(3) "InterLATA telecommunications" is telecommunications service provided between two or more LATAs.

(4) "Toll telecommunications service" means:

a. A telephonic quality communication for which:

1. There is a toll charge that varies in amount with the distance and elapsed transmission time of each individual communication; and

2. The charge is paid within the United States.

b. A service that entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area that is outside the local telephone exchange.

(5) "Private telecommunications service" means a service furnished to a subscriber that entitles the subscriber to exclusive or priority use of a communications channel or group of channels.

(6) "Telecommunications access charges" means charges paid to a provider of local telecommunications service for access to an interconnection with the local telephone exchange. (1939, c. 158, s. 207; 1949, c. 392, s. 2; 1959, c. 1259, s. 3; 1967, c. 1272, ss. 2, 4; 1971, c. 298, s. 2; 1973, c. 476, s. 193; c. 1287, s. 3; 1983 (Reg. Sess., 1984), c. 1097, ss. 3, 16; 1987, c. 557, ss. 1-3; 1989, c. 582, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 813, s. 4; c. 814, s. 11; c. 945, ss. 4, 17; 1991, c. 689, s. 28(d); 1993, c. 321, s. 26(i).)

Subsection (c) Set Out Twice. — The first version of subsection (c) set out above is effective until July 1, 1995. The second version of subsection (c) set out above is effective July 1, 1995.

Editor's Note. —

As to the applicability of the amendments to subsection (b) made by Session Laws 1989 (Reg. Sess., 1990), c. 945, s. 4, see the "Effect of Amendments" notes in the main pamphlet.

Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. —

The 1993 amendment, effective July 1, 1995, applicable beginning with taxes collected during the calendar quarter ending June 30, 1995, rewrote subsection (c).

§ 105-122. Franchise or privilege tax on domestic and foreign corporations.

(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article or schedule, shall, on or before the fifteenth day of the third month following the end of its income year, annually, make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing such facts and information as may be required by the Secretary of Revenue as shown by the books and records of the corporation at the close of such income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, his affirmation is based on all information of which he has any knowledge."

(b) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities. There shall also be treated as a deductible liability reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources certifying that the Department of Environment, Health, and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment, Health, and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955. Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof. In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus and undivided profits all indebtedness owed to or endorsed or guaranteed by a parent, subsidiary or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. The term "indebtedness" as used in this paragraph shall include all loans, credits, goods, supplies or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary or affiliate, the debtor corporation, which is required under this paragraph to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the said creditor corporation, may deduct from the debt thus included a proportionate part determined on the basis of the ratio of such borrowed capital as above specified of the creditor corporation to the total assets of the said creditor corporation. Further, in case the creditor corporation as above specified is also taxable under the provisions of this section, such creditor corporation shall be allowed to deduct from the total of its capital, surplus and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that such debt has been included in the tax base of said parent, subsidiary or affiliated debtor corporation reporting for taxation under the provisions of this section.

(c)(1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income under said Article.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State.

(2) If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Secretary has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to business within the State, it may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the appli-

cation of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subdivision.

At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the Secretary, who shall sit as a member of the Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments, and the decision thereon shall be made by a majority vote of the augmented Board.

If the corporation employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board finds that method best reflects the portion of the capital stock, surplus and undivided profits attributable to this State.

If the corporation shows that any other method of allocation than the applicable allocation formula or alternative formulas prescribed by this section reflects more clearly the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect the portion of its capital stock, surplus and undivided profits attributable to the business within this State. If the Board concludes that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the capital stock, surplus and undivided profits of the corporation than is reasonably attributable to business within this State, it shall determine the allocable portion by such other method as it finds best calculated to assign to this State for taxation the portion reasonably attributable to its business within this State.

There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's capital stock, surplus and undivided profits reasonably attributable to its business in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a franchise tax report or return to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statute is used without the permission of the Board, shall not be a lawful return.

When the Board determines, pursuant to the provisions of this Article, that an alternative formula or other method more accurately reflects the portion of the capital stock, surplus and undivided profits allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its capital stock, surplus and undivided profits for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's capital stock, surplus and undivided profits to North Carolina than will be reasonably attributable to its proposed business within the State. Upon a proper showing in accordance with the procedure described above for determination by the Board, the Board may authorize such corporation to allocate its capital stock, surplus and undivided profits to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operations presented by the corporation to the Board.

When the Secretary asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax under protest and bring a civil action for recovery under the provisions of G.S. 105-241.4.

(3) The proportion of the total capital stock, surplus and undivided profits of each such corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such corporation used in connection with its business in this State and liable for annual franchise tax under the provisions of this section.

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.

(e) Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) The report, statement and tax required by this section shall be in addition to all other reports required or taxes levied and assessed in this State.

(g) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11.)

Effect of Amendments. —

The 1993 amendment, effective January 1, 1994, in subdivision (c)(2) deleted "of Revenue" following each instance of "Secretary", in the first paragraph substituted "may" for "shall be entitled to" preceding "file with the Tax Review Board", substituted "on the petition" for "thereon" at the end of the second sentence, added the third sentence; in the second paragraph substituted "the Board" for "said Board", deleted the former last sentence, deleted the former subdivision designations (c)(2)a. and (c)(2)b.; in the third paragraph substituted "employs" for "shall employ", substituted "may permit" for "shall be authorized to permit", substituted "finds that method best reflects" for "deems such method proper as best reflecting"; in the fourth paragraph substituted "shows" for "shall show", substituted "concludes" for "shall conclude", substituted "finds" for "shall find"; and in the sixth paragraph substituted "may" for "of Revenue may, in his discretion".

§ 105-125. Exempt corporations.

(a) Exemptions. — The following corporations are exempt from the taxes levied by this Article. Upon request of the Secretary, an exempt corporation must establish its claim for exemption in writing:

(1) A charitable, religious, fraternal, benevolent, scientific, or educational corporation not operated for profit.

(2) An insurance company subject to tax under Article 8B of this Chapter.

(3) A mutual ditch or irrigation association, a mutual or cooperative telephone association or company, a mutual canning association, a cooperative breeding association, or a similar corporation of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses.

(4) A cooperative marketing association that operates solely for the purpose of marketing the products of members or other farmers and returns to the members and farmers the proceeds of sales, less the association's necessary operating expenses, including interest and dividends on capital stock, on the basis of the quantity of product furnished by them. The association's operations may include activities directly related to these marketing activities.

(5) A production credit association organized under the federal Farm Credit Act of 1933.

(6) A club organized and operated exclusively for pleasure, recreation, or other nonprofit purposes, a civic league operated exclusively for the promotion of social welfare, a business league, or a board of trade.

(7) A chamber of commerce or merchants' association not organized for profit, no part of the net earnings of which inures to the benefit of a private stockholder, an individual, or another corporation.

(8) An organization, such as a condominium association, a homeowners' association, or a cooperative housing corporation not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation. To qualify for the exemption, the organization must be operated exclusively for the management, operation, preservation, maintenance, or landscaping of the residential units owned by the organization or its members or of the common areas and facilities that are contiguous to the residential units and owned by the organization or by its members. To qualify for the exemption, no part of the net earnings of the organization may inure, other than through the performance of related services for the members of the organization, to the benefit of any person.

(9) Except as otherwise provided by law, an organization exempt from federal income tax under the Code.

Provided, that an entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from all of the taxes levied in this Article. Upon request by the Secretary of Revenue, a real estate mortgage investment conduit must establish in writing its qualification for this exemption.

(b) Certain Investment Companies. — A corporation doing business in North Carolina that qualifies as a "regulated investment company" under section 851 of the Code or as a "real estate investment trust" under section 856 of the Code and elects for federal income tax purposes to be treated as a "regulated investment company" or as a "real estate investment trust," may, in determining its basis for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1; 1967, c. 1110, s. 2; 1971, c. 820, s. 3; c. 833, s. 1; 1973, c. 476, s. 193; c. 1053, s. 2; c. 1287, s. 3; 1975, c. 591, s. 1; 1983, c. 28, s. 2; c. 713, s. 67; 1985 (Reg. Sess., 1986), c. 826, s. 4; 1991, c. 30, s. 6; 1993, c. 485, s. 4; c. 491, s. 1.)

Editor's Note. — This section has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 1993, c. 485, s. 4, effective July 23, 1993, substituted "Exempt corporations" for "Corporations not mentioned" in the catchline to this section, and rewrote the section.

Session Laws 1993, c. 494, s. 1, effective for taxable years beginning on or after January 1, 1993, amended this section prior to its amendment by Session Laws 1993, c. 485, s. 4 by adding the last paragraph of subsection (a).

§ 105-127. When franchise or privilege taxes payable.

(a) Every corporation, domestic or foreign, from which a report is required by law to be made to the Secretary of Revenue, shall, unless otherwise provided, pay to said Secretary annually the franchise tax as required by G.S. 105-122.

(b) It shall be the duty of the Secretary of Revenue to mail to the registered address, last listed with the Secretary of Revenue, of every such corporation, report forms to be used in complying with the provisions of this Article or schedule, which forms shall contain a copy of so much of this and other sections of this Article as relates to penalties for failure to pay said taxes.

(c) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is herein imposed, to transmit the amount of the tax due to the Secretary of Revenue within the time provided by law for payment of same.

(d) Individual stockholders in any corporation, joint-stock association, limited partnership, or company paying a tax on its entire capital stock shall not be required to list or pay ad valorem taxes on the shares of stock owned by them.

(e) Corporations in the State legally holding shares of stock in other corporations, upon which the tax has been paid to the State by the corporation issuing the same, shall not be required to list or pay an ad valorem tax on said shares of stock.

(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs. (1939, c. 158, s. 215; 1973, c. 476, s. 193; 1991, c. 30, s. 7; 1993, c. 485, s. 6.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, added subsection (f).

ARTICLE 4.

Schedule D. Income Tax.

DIVISION I. CORPORATION INCOME TAX.

§ 105-130. Short title.

CASE NOTES

Cited in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

§ 105-130.2. Definitions.

The following definitions apply in this Division:

(1) Code. — Defined in G.S. 105-228.90.

(1a) Corporation. — A joint-stock company or association, an insurance company, a domestic corporation, a foreign corporation, or a limited liability company.

(1b) C Corporation. — A corporation that is not an S Corporation.

(1c) Department. — The Department of Revenue.

(2) Domestic corporation. — A corporation organized under the laws of this State.

(3) Fiscal year. — An income year, ending on the last day of any month other than December. A corporation that pursuant to the provisions of the Code has elected to compute its federal income tax liability on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income under this Division on the basis of the same period used by the corporation in computing its federal income tax liability for the income year.

(4) Foreign corporation. — Any corporation other than a domestic corporation.

(4a) Income year. — The calendar year or the fiscal year upon the basis of which the net income is computed under this Division. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Division or under rules adopted by the Secretary, the income year is the period for which the return is made.

(5) Limited liability company. — Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company autho-

rized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Division, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company.

(5a) S Corporation. — Defined in G.S. 105-131(b).

(5b) Secretary. — The Secretary of Revenue.

(5c) State net income. — Federal taxable income adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.

(5d) Taxable year. — Income year.

(6) Taxpayer. — A corporation subject to the tax imposed by this Division. (1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, ss. 68, 82; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 3; 1989, c. 36, s. 3; 1989 (Reg. Sess., 1990), c. 981, s. 3; 1991, c. 689, s. 257; 1991 (Reg. Sess., 1992), c. 922, s. 4; 1993, c. 12, s. 5; c. 354, s. 12.)

Editor's Note. — Session Laws 1993, c. 354, s. 12 originally enacted subdivision (5) as subdivision (5a), and redesignated subdivisions (5a), (5b), and (5c) as (5b), (5c), and (5d), respectively. Subdivision (5) has been redesignated as (4a), subdivision (5a) as (5), and (5a), (5b), and (5c) have not been changed, at the direction of the Revisor of Statutes.

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 12, s. 5, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date".

Session Laws 1993, c. 354, s. 12, effective October 1, 1993, in subdivision (1a) substituted "A" for "This term includes", substituted "company or association, an" for "companies or associations and" preceding "insurance", substituted "company, a domestic corporation, a foreign corporation, or a limited liability company" for "companies" following "insurance"; and added the definition of limited liability company.

§ 105-130.3. Corporations.

CASE NOTES

Cited in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

§ 105-130.4. Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, a loan company or a corporation which receives more than fifty percent (50%) of its ordinary gross income from investments in and/or dealing in intangible property.

(5) "Nonbusiness income" means all income other than business income.

(6) "Public utility" means any corporation which is subject to control of North Carolina Utilities Commission and/or Federal Communications Commission, Interstate Commerce Commission, Federal Power Commission and Federal Aviation Agency and which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas.

(7) "Sales" means all gross receipts of the corporation except receipts from any casual sale of property and except receipts allocated under subsections (c) through (h) of this section.

(8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.

(9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

(c) Rents and royalties from real or tangible personal property, gains and losses, interest, dividends less the portion deductible under G.S. 105-130.7, patent and copyright royalties and other kinds of income, to the extent that they constitute nonbusiness income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d)(1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:
   a. If and to the extent that the property is utilized in this State, or
   b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e)(1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if
   a. The property had a situs in this State at the time of the sale, or
   b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State subject to the following limitations:

(1) Net dividends received by a corporation from another corporation in which the recipient corporation owns fifty (50%) or more per centum of the paying corporation's voting stock, shall be allocated to this State if the paying corporation is subject to income tax in this State. In such case, the net amount of such dividends received by the recipient corporation from the paying corporation is allocable to this State by use of the same percentage figure used in determining the portion of the paying corporation's dividends deductible under the provisions of G.S. 105-130.7.

(2) For purposes of this section, the net amount of dividends shall mean gross dividend income received less related ex-

penses and less that portion of such dividends deductible under the provisions of G.S. 105-130.7.

(g)(1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:

a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or

b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) The income less related expenses from any other nonbusiness activities or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments are located in this State.

(i) All business income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

(j)(1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute business income. Any property under

construction and any property the income from which constitutes nonbusiness income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation which ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k)(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during the income year. All compensation paid to general executive officers and all compensation paid in connection with nonbusiness income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

(2) Compensation is paid in this State if:

a. The individual's service is performed entirely within the State; or

b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(*l*)(1) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Division, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State.

(m) All business income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

"Railway operating revenue" from business done within this State shall mean "railway operating revenue" from business wholly within this State, plus the equal mileage proportion within this State of each item of "railway operating revenue" received from the interstate business of the company. "Equal mileage proportion" shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. "Interstate business" shall mean "railway operating revenue" from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a corporation for purposes of this Division and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(n) All business income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) All business income of a motor carrier of property shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company hauling property for a charge or traveling on a scheduled route.

(p) All business income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) All business income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (*l*) of this section.

(r) All business income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(s) All business income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(t)(1) If any corporation believes that the method of allocation or apportionment as administered by the Secretary has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings within the State, it may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing on the petition. The time limitations set in

G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subsection. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases, the Tax Review Board's membership shall be augmented by the addition of the Secretary, who shall sit as a member of the Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this subsection. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board.

(2) If the corporation employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board finds that method best reflects the income and earnings attributable to this State.

(3) If the corporation shows that any other method of allocation than the applicable allocation formula prescribed by this section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the corporation believes will more nearly reflect its income from business within this State. If the Board concludes that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it finds best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.

(4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State, and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning corporation is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board, and any return

in which any alternative formula or other method, other than the applicable allocation formula prescribed by statute, is used without permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations, and activities.

(5) A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.

(6) When the Secretary asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in subsection (t), deleted "of Revenue" following "Secretary" throughout the subsection; in subdivision (t)(1) substituted "may file" for "shall be entitled to file", substituted "on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subsection" for "thereon", substituted "the Board" for "said Board", substituted "subsection" for "section" at the end of the sixth sentence; in subdivision (t)(2) substituted "employs" for "shall employ", substituted "may permit" for "shall be authorized to permit", substituted "finds that method best reflects" for "deems such method proper as best reflecting"; in subdivision (t)(3) substituted "shows" for "shall show", substituted "concludes" for "shall conclude", substituted "finds" for "shall find"; and in subdivision (t)(4) substituted "may" for "of Revenue may, in his discretion".

CASE NOTES

Cited in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

(1) Taxes based on or measured by net income by whatever name called and excess profits taxes;

(2) Interest paid in connection with income exempt from taxation under this Division;

(3) The contributions deduction allowed by the Code;

(4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963;

(5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition;

(6) The net operating loss deduction allowed by the Code; and

(7) Special deductions allowable under sections 241 to 247, inclusive, of the Code.

(8) Repealed by Session Laws 1987, c. 778, s. 2.

(9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.

(10) The total amounts allowed under this Article during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Article the apportionment factor used by it in determining the amount of its apportioned income.

(11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable

income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.

(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.

(13) The amount of income the Code allowed the taxpayer to exclude because the income was attributed under section 925 of the Code to a foreign sales corporation, to the extent the Code required the amount to be included in the federal taxable income of the foreign sales corporation to which it was attributed.

(b) The following deductions from federal taxable income shall be made in determining State net income:

(1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States;

(2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State;

(3) The deductible portion of dividends from stock issued by any corporation as provided under G.S. 105-130.7;

(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the five preceding years pursuant to the provisions of G.S. 105-130.8. Provided, a corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8;

(5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9;

(6) Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.

(7) Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes; and

(8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the

Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.

(10) Repealed by Session Laws 1987, c. 778, s. 2.

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.

(12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:

a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or

3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

d. For the purposes of this subsection the term "foreign person" means:

1. An individual who is not a resident of the United States;
2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
3. A foreign branch of a domestic corporation (including the taxpayer);
4. A foreign government or an international organization or an agency of either, or
5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this division.

(3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Division; provided,

no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b).

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 4, 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, inserted "a" preceding "utility plant" in subdivision (a)(12); and in subdivision (b)(11) substituted "If" for "The amount by which," inserted "or was not allowed," deleted "for federal tax purposes or the amount of such a deduction that was not allowed under the Code" preceding "because the corporation," and added at the end "the amount by which the deduction was reduced and the amount of the deduction that was disallowed."

§ 105-130.11. Conditional and other exemptions.

(a) Exempt Organizations. — Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Division.

(1) Fraternal beneficiary societies, orders or associations
  a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and
  b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

(2) Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the

net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

(9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

Nothing in this subdivision shall be construed to exempt any cooperative, mutual association, or other organization from an income tax on net income that has not been refunded to patrons on a patronage basis and distributed either in cash, stock, or certificates, or in some other manner that discloses the amount of each patron's refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of the taxable year are considered as to be made on the last day of the taxable year to the extent the allocations are attributable to income derived before the close of the year; provided, that no stabilization or marketing organization that handles agricultural products for sale for producers on a pool basis is considered to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool have been sold and the pool has been closed; provided, further, that a pool is not considered closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. These cooperatives and other organizations shall file an annual information return with the Secretary on forms to be furnished by the Secretary and shall include the names and addresses of all persons, patrons, or shareholders whose patronage refunds amount to ten dollars ($10.00) or more.

(10) Insurance companies paying the tax on gross premiums as specified in G.S. 105-228.5.

(11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance, or landscaping of the common areas and facilities owned by the corporation or organization or its members situated contiguous to the houses, apartments, or other dwellings or

for the management, operation, preservation, maintenance, and repair of the houses, apartments, or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of the corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Unrelated Business Income. — Except as provided in this subsection, an organization described in subdivision (a)(1), (3), (4), (5), (6), (7), (8), or (9) of this section and any organization exempt from federal income tax under the Code is subject to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived from any of the following:

(1) Research performed by a college, university, or hospital.
(2) Research performed for the United States or its instrumentality or for a state or its political subdivision.
(3) Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

(c) Homeowner Association Income. — An organization described in subdivision (a)(11) of this section is subject to the tax provided in G.S. 105-130.3 on its gross income other than membership income less the deductions allowed by this Article that are directly connected with the production of the gross income other than membership income. The term "membership income" means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development.

(d) Real Estate Mortgage Investment Conduits. — An entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from the tax imposed under this Division, except that any net income derived from a prohibited transaction, as defined in section 860F of the Code, is taxable to the real estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the holders of a regular or residual interest in a real estate mortgage investment conduit as defined in section 860G of the Code from any tax on the income from that interest. (1939, c. 158, s. 314; 1945, c. 708, s. 4; c. 752, s. 3; 1949, c. 392, s. 3; 1951, c. 937, s. 1; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1053, s. 4; 1975, c. 19, s. 28; c. 591, s. 2; 1981, c. 450, s. 2; 1983, c. 28, s. 1; c. 31; 1985 (Reg. Sess., 1986), c. 826, s. 5; 1991 (Reg. Sess., 1992), c. 921, s. 1; 1993, c. 494, s. 2.)

Effect of Amendments. — The 1993 amendment, effective for taxable years beginning on or after January 1, 1993, added subsection (d).

§ 105-130.19. When tax must be paid.

(a) Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return.

(b), (c) Repealed by Session Laws 1989, c. 37, s. 1, effective for taxable years beginning on or after January 1, 1989.

(d) Repealed by Session Laws 1993, c. 450, s. 3, effective August 1, 1993. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1977, c. 1114, s. 7; 1989, c. 37, s. 1; 1989 (Reg. Sess., 1990), c. 984, s. 9; 1991 (Reg. Sess., 1992), c. 930, s. 14; 1993, c. 450, s. 3.)

Effect of Amendments. —
The 1993 amendment, effective August 1, 1993, in the title to this section substituted "When tax must be paid" for "Time and place of payment of tax"; in the first sentence of subsection (a) substituted "return must" for "face of the return shall", deleted "of Revenue at the office where the return is filed and" following "Secretary", substituted "allowed" for "fixed by law"; and deleted subsection (d), relating to payment by certified check.

§ 105-130.20. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the income year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits its rights to any refund due by reason of the determination. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 582, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995, substituted the present section catchline for "Corrections and changes" and rewrote the section.

§ 105-130.23. Credit against corporate income tax for solar energy equipment in residential buildings.

(a) Any corporation that causes to be constructed or installed solar energy equipment for water heating, space heating or cooling, or electricity in residential buildings used or sold by the corporation for commercial or business purposes in North Carolina is allowed a credit against the taxes imposed by this Division equal to forty percent (40%) of the installation and equipment cost of the solar energy equipment. A credit allowed under this section shall not exceed one thousand five hundred dollars ($1,500) per system or per year for any single building or each family dwelling unit of a multi-dwelling building that is individually metered for electric power or natural gas or has a separate furnace for oil heat paid for by the occupant. To obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which solar energy equipment is constructed or installed, the credit is allowed to the owner who first occupies the building for use after the construction or installation of the equipment or the owner-lessor who first leases the building for use after the construction or installation of the equipment. The credit shall not be allowed to the extent that any of the cost of the equipment was provided by federal, State, or local grants. If the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed, except payments of tax made by or on behalf of the taxpayer, the excess shall be allowed against the taxes imposed by this Division for the next five succeeding years.

(b) For the purpose of this section, the term "solar energy equipment for water heating, space heating or cooling, or electricity" means any solar energy equipment for water heating, space heating or cooling, or electricity that meets the performance criteria approved and published by the Secretary. (1977, c. 792, s. 4; 1979, c. 892, s. 1; 1981, c. 921, ss. 3, 4; 1993 (Reg. Sess., 1994), c. 584, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, substituted "energy equipment in residential buildings" for "hot water, heating and cooling" in the section catchline; in subsection (a), in the first sentence substituted "energy equipment for water heating, space heating or cooling, or electricity in" for "hot water, heating or cooling equipment in buildings to include," substituted "forty percent (40%)" for "twenty-five percent (25%)" and substituted "energy equipment" for "hot water, heating or cooling equipment; provided that" at the end, in the second sentence added "A" at the beginning, substituted "one thousand five hundred dollars ($1,500)" for "one thousand dollars ($1,000)" and deleted "provided further, that to" from the end, split the former third sentence to form the present third and fourth sentences, in the third sentence added "To" at the beginning, substituted "energy equipment" for "system" three times and deleted "provided, further, that the" from the end, in the fourth sentence added "The" at the beginning, substituted "equipment" for "system" and deleted "and provided further, that if" from the end, and in the fifth sentence added "If" at the beginnning, substituted "allowed, except payments of tax made by or on behalf of the taxpayer, the excess" for "allowed by the provisions of this Division, such excess," and substituted "five" for "three"; in subsection (b) substituted "energy equipment for water heating, space heating or cooling, or electricity" for "hot water, heating and cooling equipment", substituted "solar energy equipment for water heating, space heating or cooling, or electricity that" for "hot water, heating, cooling, or heating and cooling which," deleted "definitive performance criteria established by the U.S. Secretary of the Treasury or any other," deleted "of Revenue, or passive solar systems that meet the eligibility criteria approved and published by the Secretary of Revenue"; and made stylistic changes.

§ 105-130.25. Credit against corporate income tax for construction of cogenerating power plants.

(a) Credit. — A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the costs paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the corporation or partnership must own or control the power plant at the time of construction. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(b) **(Effective for costs paid before January 1, 1998)** Cogenerating Power Plant Defined. — For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy from the same primary energy source. The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel.

(b) **(Effective for costs paid on or after January 1, 1998)** Cogenerating Power Plant Defined. — For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy using natural gas as its primary energy source.

(c) Alternative Method. — A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Division for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(d) Application. — To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(e) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d). If the total amount of tax credits claimed for payments made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (d). In such a reapplication, the costs for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (d) are final and shall not be adjusted to account for credits applied for but not claimed. (1979, c. 801, s. 34; 1993 (Reg. Sess., 1994), c. 674, ss. 1, 2, 4.)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until January 1, 1998. The second version of subsection (b) set out above is effective January 1, 1998.

Editor's Note. — Subsections (a1) and (b) through (d) were redesignated as subsections (b) through (e), respectively, at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 674, s. 1, effective for taxable years beginning on or after January 1, 1993, added the subsection (a) and (b) designations; rewrote subsections (a) and (b); and added subsection (c).

Session Laws 1993 (Reg. Sess., 1994), c. 674, s. 2, effective for taxable years beginning on or after January 1, 1994, in this section as amended by s. 1 of c. 674, in subsection (a) added the second sentence; in subsection (b) in the first sentence inserted "that"; and added subsections (d) and (e).

Session Laws (Reg. Sess., 1994), c. 674, s. 4, effective for costs paid on or after January 1, 1998, in subsection (a1) in the first sentence substituted "using natural gas as its" for "from the same," and deleted the second sentence which read "The credit allowed by this section does not apply to construction of a cogenerating power plant whose combustion equipment uses residual oil, middle distillate oil, gasoline, or liquid propane gas (LPG) as a primary fuel."

§ 105-130.27. Credit against corporate income tax for construction of a fuel ethanol distillery.

(a) Credit Allowed. — Any corporation which constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) Definitions. — For purposes of this section:

(1) "Alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(2) "Qualified uses" of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distillery must be intended for qualified uses in order to be eligible for the credit allowed by this section.

(3) A "distillery" includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. — The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars ($2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars ($2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-151.6 for payments made in the calendar year is less than two million five hundred thousand dollars ($2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars ($5,000,000). In no case may the total amount of all tax credits allowed under G.S. 105-151.6 and this section for payments made in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. — The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Repealed by Session Laws 1991, c. 45, s. 6, effective April 22, 1991.

(g) Expiration. — This section applies only to costs incurred during taxable years beginning prior to January 1, 1998. (1979, 2nd Sess., c. 1265, s. 1; 1987, c. 872, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 13; 1991, c. 45, s. 6; 1991 (Reg. Sess., 1992), c. 913, s. 14; 1993 (Reg. Sess., 1994), c. 745, s. 34.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (g) substituted "1998" for "1996".

§ 105-130.28. Credit against corporate income tax for construction of a photovoltaic equipment facility.

(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this Division equal to twenty-five percent (25%) of the installation and equipment costs of construction. This credit shall not be allowed to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.

(c) The amount of credit allowed under this section may be carried over for the next succeeding five years. (1981, c. 921, s. 1; 1993 (Reg. Sess., 1994), c. 584, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, in subsection (a), in the first sentence, substituted "twenty-five percent (25%)" for "twenty percent (20%)," and in the second sentence substituted "equipment" for "system"; in subsection (b) deleted "without a need for additional generating or conversion equipment"; and made stylistic changes.

§ 105-130.32. Credit against corporate income tax for installation of solar energy equipment for the production of heat or electricity in certain processes.

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this Division equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy equipment. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun. (1981, c. 921, s. 1; 1983 (Reg. Sess., 1984), c. 1104, s. 1; 1993 (Reg. Sess., 1994), c. 584, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, in the section catchline inserted "energy" and substituted "heat or electricity in certain processes" for "industrial or process heat"; inserted "energy" following "solar" throughout the section; in subsection (a), in the first sentence inserted "or electricity," substituted "is allowed" for "shall be allowed," substituted "thirty-five percent (35%)" for "twenty percent (20%)," in the second sentence substituted "twenty-five thousand dollars ($25,000)" for "eight thousand dollars ($8,000)" and substituted "equipment" for "system".

§ 105-130.37. Credit for gleaned crop.

(a) Any corporation that grows a crop and permits the gleaning of the crop shall be allowed a credit against the tax imposed by this Division equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years.

(b) The following definitions apply to this section:

(1) "Gleaning" means the harvesting of a crop that has been donated by the grower to the nonprofit organization which will distribute the crop to individuals or other nonprofit organizations it considers appropriate recipients of the food;

(2) "Market price" means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of Agriculture, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop; and

(3) "Nonprofit organization" means an organization to which charitable contributions are deductible from gross income under the Code. (1983 (Reg. Sess., 1984), c. 1018, s. 1; 1993 (Reg. Sess., 1994), c. 745, s. 6.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subdivision (b)(3) substituted "to which charitable contributions are deductible from gross income under the Code" for "for which contributions are deductible under G.S. 105-130.9 or 105-147(15) or (16)".

§ 105-130.40. Credit for creating jobs in severely distressed county.

(a) Credit. — A corporation that (i) for at least 40 weeks during the year has at least nine employees and (ii) is located, for part or all of its taxable year, in a severely distressed county may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation that hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars ($2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the corporation of the number of full-time employees the corporation had upon hiring the employee that caused the corporation to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of the corporation's full-time employees falls below the number of full-time employees the company had in the year in which the corporation qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the corporation may not take any remaining installment of the credit. The corporation may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1) Eligibility. — A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.

(c) County Designation. — A severely distressed county is a county designated as severely distressed by the Secretary of Commerce. Each year, on or before December 31, the Secretary of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the fifty highest in the State. The Secretary shall assign to each county in the State a distress factor that is the sum of the following:

(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.
(2) The county's rank in a ranking of counties by per capita income from highest to lowest.
(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) Planned Expansion. — A corporation that, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is still available. If the corporation does not hire the employees within the two-year period, the corporation does not qualify for the credit. However, if the corporation qualifies for a credit under subsection (a) in the year any new employees are hired, it may take the credit under that subsection.

(e) Limitations. — The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor corporation may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years.

(f) Substantiation. — Every corporation claiming the credit provided in subsection (a) shall maintain and make available for inspection by the Secretary of Revenue or his agent such records as may be necessary to determine and verify the amount of the credit to which it is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the corporation, and no credit shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection. (1987, c. 568, s. 1; 1989, c. 111, s. 1; c. 751, ss. 7(6), 8(10); c. 753, s. 4.1(a), (b); 1989 (Reg. Sess., 1990), c. 814, s. 14; 1991, c. 517, ss. 1, 3; 1991 (Reg. Sess., 1992), c. 959, s. 20; 1993, c. 45, s. 1; c. 485, s. 7.)

Editor's Note. —

Session Laws 1993, c. 45, which amended this section, in s. 3 provides: "By July 15, 1993, the Secretary of Commerce shall give the Secretary of Revenue a list of the 17 counties that this act adds to the category of severely distressed counties. In compiling this list, the Secretary of Commerce shall use the same data that was available when the list of 33 counties was compiled for submission by December 31, 1992."

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. —

Session Laws 1993, c. 485, c. 7, effective July 23, 1993, substituted "State Planning Officer" for "State Budget Officer" in the next-to-last sentence of subsection (c).

Session Laws 1993, c. 45, s. 1, effective May 13, 1993 for taxable years beginning on or after January 1, 1993, substituted "fifty" for "thirty-three" following "distress factor is one of the" in subsection (c).

§ 105-130.41. (For expiration date see note) Credit for North Carolina State Ports Authority wharfage and handling charges on exports.

(a) Credit. — A taxpayer who is a cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo onto an ocean carrier calling at either State-owned port terminal, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling in, and through put charges assessed on the cargo owned by that cargo owner for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, and container cargo including less-than-container load cargo. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. — This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a corporation under this section is one million dollars ($1,000,000).

(c) Definitions. — For purposes of this section, the terms "handling in" and "wharfage" have the meanings provided in the State Ports Tariff Publications, "Wilmington Tariff, Terminal Tariff #6," and "Morehead City Tariff, Terminal Tariff #1." For purposes of this section, the term "through put" has the same meaning as "wharfage" but applies only to bulk products, both dry and liquid. (1991 (Reg. Sess., 1992), c. 977, s. 1; 1993 (Reg. Sess., 1994), c. 681, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 977, s. 4 made this section effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996.

Session Laws 1991 (Reg. Sess., 1992), c. 977, which enacted this section, in s. 3, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 681, s. 3, provides: "The North Carolina State Ports Authority shall report annually to the General Assembly regarding the impact of this act on shipping and economic growth. Each report shall show the overall annual increase in shipping at each port affected by this act for the most recent year for which data is available and for each of the previous 10 years. Each report shall estimate the number of jobs created at each port and in businesses related to port activity at each port since July 1, 1992, as compared to the number of similar jobs created during the 10 years preceding July 1, 1992. Each report shall state the net economic impact on the State as a result of the allowance of tax credits under this act. Each report shall include the number of persons using the tax credit who have stopped, or are likely to stop, using a North Carolina port when the credit expires and to then use a port in another state. The Ports Authority shall file a report on May 1 of 1993, 1994, and 1995, by submitting a copy to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Department of Revenue and the Department of Commerce shall cooperate with the Ports Authority in providing the information required in the annual reports."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, rewrote subsection (a), deleted "under this Division" following "allowable" in the first sentence of subsection (b) and substituted "'handling in'" for "'handling'" in the first sentence of subsection (c).

§ 105-130.42. Credit for rehabilitating an historic structure.

A taxpayer who makes qualifying rehabilitation expenditures as defined in section 47 of the Code with respect to a certified historic structure located in this State is allowed as a credit against the tax imposed by this Division an amount equal to one-fourth of the federal income tax credit under the Code for which the taxpayer is eligible for those rehabilitation expenditures. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer. (1993, c. 527, s. 1.)

Editor's Note. — Session Laws 1993, c. 527, s. 3 makes this section effective for taxable years beginning on or after January 1, 1994.

Division I-S. S Corporation Income Tax.

§ 105-131. Title; definitions; interpretation.

(a) This Division of the income tax Article shall be known and may be cited as the S Corporation Income Tax Act.

(b) For the purpose of this Division, unless otherwise required by the context:

(1) "Code" has the same meaning as in G.S. 105-228.90.

(2) "C Corporation" means a corporation that is not an S Corporation and is subject to the tax levied under Division I of this Article.

(3) "Department" means the Department of Revenue.

(4) "Income attributable to the State" means items of income, loss, deduction, or credit of the S Corporation apportioned and allocated to this State pursuant to G.S. 105-130.4.

(5) "Income not attributable to the State" means all items of income, loss, deduction, or credit of the S Corporation other than income attributable to the State.

(6) "Post-termination transition period" means that period defined in section 1377(b)(1) of the Code.

(7) "Pro rata share" means the share determined with respect to an S Corporation shareholder for a taxable period in the manner provided in section 1377(a) of the Code.

(8) "S Corporation" means a corporation for which a valid election under section 1362(a) of the Code is in effect.

(9) "Secretary" means the Secretary of Revenue.

(10) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S Corporation.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this Division shall have the same meaning as when used in a comparable context in the Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration shall be given in the interpretation of this Division to applicable sections of the Code in effect and to federal rulings and regulations interpreting those sections, except where the Code, ruling, or regulation conflicts with the provisions of this Division. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1989 (Reg. Sess., 1990), c. 981, s. 4; 1991, c. 689, s. 251; 1991 (Reg. Sess., 1992), c. 922, s. 5; 1993, c. 12, s. 6.)

Effect of Amendments. — The 1993 amendment, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date".

§ 105-131.2. Adjustment and characterization of income.

(a) Adjustment. The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-134.6(b), (c), and (d).

(b) Repealed by Session Laws 1989, c. 728, s. 1.35, effective for taxable years beginning on or after January 1, 1989.

(c) Characterization of Income. S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) shall be characterized as though received or incurred by the S Corporation and not its shareholder. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1993, c. 485, s. 8.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, in subsection (a) substituted "adjusted as" for "subject to the adjustments", and substituted "adjusted as provided in G.S. 105-134.6(b), (c), and (d)" for "subject to the adjustments provided in G.S. 105-134.6(b) and (c)".

DIVISION II. INDIVIDUAL INCOME TAX.

§ 105-134.1. Definitions.

The following definitions apply in this Division:

(1) Code. — Defined in G.S. 105-228.90.
(2) Department. — The Department of Revenue.
(3) Educational institution. — An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.
(4) Fiscal year. — Defined in section 441(e) of the Code.
(5) Gross income. — Defined in section 61 of the Code.
(6) Head of household. — Defined in section 2(b) of the Code.
(7) Individual. — A human being.

(7a) Limited liability company. — Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Division, the term "partner" means a member of the limited liability company.

(8) Married individual. — An individual who is married and is considered married as provided in section 7703 of the Code.

(9) Nonresident individual. — An individual who is not a resident of this State.

(10) North Carolina taxable income. — Defined in G.S. 105-134.5.

(10a) Partnership. — A domestic partnership, a foreign partnership, or a limited liability company.

(11) Person. — Defined in G.S. 105-228.90.

(12) Resident. — An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

(13) Retirement benefits. — Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term "employee" includes a volunteer worker.

(14) S Corporation. — Defined in G.S. 105-131(b).

(15) Secretary. — The Secretary of Revenue.

(16) Taxable income. — Defined in section 63 of the Code.

(17) Taxable year. — Defined in section 441(b) of the Code.

(18) Taxpayer. — An individual subject to the tax imposed by this Division.

(19) This State. — The State of North Carolina. (1989, c. 728, s. 1.4; c. 792, s. 1.2; 1989 (Reg. Sess., 1990), c. 814, s. 15; c. 981, s. 5; 1991, c. 689, s. 252; 1991 (Reg. Sess., 1992), c. 922, s. 6; 1993, c. 12, s. 7; c. 354, s. 13.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 12, s. 7, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date".

Session Laws 1993, c. 354, s. 13, effective October 1, 1993, in this section as amended by Session Laws 1993, c. 12, in subdivision (7) substituted "human being" for "natural person"; added subdivisions (7a) and (10a); and in subdivision (11) substituted "Defined in G.S. 105-228.90" for "An individual, a fiduciary, or a partnership. The term includes an officer or employee of a corporation or a member or employee of a partnership who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division".

§ 105-134.6. Adjustments to taxable income.

(a) S Corporations. — The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b), (c), and (d) of this section.

(b) Deductions. — The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

(1) Interest upon the obligations of (i) the United States or its possessions, (ii) this State or a political subdivision of this State, or (iii) a nonprofit educational institution organized or chartered under the laws of this State.

(2) Interest upon obligations and gain from the disposition of obligations to the extent the interest or gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.

(5) Refunds of state, local, and foreign income taxes included in the taxpayer's gross income.

(6) a. An amount, not to exceed four thousand dollars ($4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.

b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.

c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars ($2,000) in any taxable year.

d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.

(7) Recodified as G.S. 105-134.6(d)(1).

(8) Recodified as G.S. 105-134.6(d)(2).

(9) Income that is (i) earned or received by an enrolled member of a federally recognized Indian tribe and (ii) derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.

(10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(c) Additions. — The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

(1) Interest upon the obligations of states, other than this State, and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.

(3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code and the amount by which the taxpayer's personal exemptions have been increased for inflation under section 151(d)(4)(A) of the Code. For the purpose of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

(5) The fair market value, up to a maximum of one hundred thousand dollars ($100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

(6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(d) Other Adjustments. — The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of income is included. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary of Revenue may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision.

(2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Division for the amount. (1989, c. 718, s. 2; c. 728, s. 1.4; c. 770, ss. 41.2, 41.3; c. 792, s. 1.1; 1989 (Reg. Sess., 1990), c. 984, s. 4; c. 1002, s. 2; 1991, c. 45, s. 9; c. 453, s. 1; c. 689, ss. 253, 254; 1991 (Reg. Sess., 1992), c. 1007, s. 3; 1993, c. 12, s. 8; c. 443, s. 8; c. 485, s. 9; 1993 (Reg. Sess., 1994), c. 745, s. 7.)

Effect of Amendments. —

Session Laws 1993, c. 12, s. 8, effective for taxable years beginning on or after January 1, 1993, in the first sentence of subdivision (c)(4), substituted "section 151(d)(4)(A)" for "section 151(d)(4)".

Session Laws 1993, c. 443, s. 8, effective January 1, 1994, added subdivision (c)(6).

Session Laws 1993, c. 485, s. 9, effective July 23, 1993, in this section as amended by Session Laws 1993, c. 12, substituted "subsections (b), (c), and (d)" for "subsections (b) and (c)" in subsection (a); substituted "taxable" for "gross" preceding "income" in subsections (b) and (c); substituted "Recodified as G.S. 105-134.6(d)(1)" for former subdivision (b)(7); substituted "Recodified as G.S. 105-134.6(d)(2)" for former subdivision (b)(8); added subdivision (b)(9); and added subsection (d).

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, added subdivision (b)(10).

CASE NOTES

Cited in Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

§ 105-134.7. Transitional adjustments.

(a) The following adjustments to taxable income shall be made in calculating North Carolina taxable income:

(1) Amounts that were included in the basis of property under federal tax law but not under State tax law before January 1, 1989, shall be added to taxable income in the year the taxpayer disposes of the property.

(2) Amounts that were included in the basis of property under State tax law but not under federal tax law before January 1, 1989, shall be deducted from taxable income in the year the taxpayer disposes of the property.

(3) Amounts that were recognized as income under federal law but not under State law due to a taxpayer's use of the installment method set out in G.S. 105-142(f) prior to January 1, 1989, shall be added to taxable income in the taxpayer's first taxable year beginning on or after January 1, 1989. Amounts that were recognized as income under State law but not under federal law due to a taxpayer's use of a different installment method prior to January 1, 1989, shall be deducted from taxable income in the taxpayer's first taxable year beginning on or after January 1, 1989.

(4) Losses in the nature of net economic losses sustained in any or all of the five taxable years preceding the taxpayer's first taxable year beginning on or after January 1, 1989, arising from business transactions, business capital, or business property, may be deducted from taxable income subject to the limitations contained in former G.S. 105-147(9)a., c., and d. (repealed).

(5) If the taxpayer has a net operating loss for a taxable year beginning on or after January 1, 1989, that part of the loss that is carried back to and deducted in a taxable year beginning before January 1, 1989, pursuant to section 172 of the Code may be deducted from taxable income in the taxable year following the taxable year for which the loss occurred.

(6) A loss or deduction that was incurred or paid and deducted from State taxable income in a taxable year beginning before January 1, 1989, and is carried forward and deducted in a taxable year beginning on or after January 1, 1989, under the Code shall be added to taxable income.

(7) The transitional adjustments provided in Division I-S of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income.

(b) The Secretary may by rule require other adjustments to be made to taxable income as necessary to assure that the transition to the tax changes effective January 1, 1989, will not result in double taxation of income, exemption of otherwise taxable income from taxation under this Division, or double allowance of deductions. (1989, c. 728, s. 1.4; 1993, c. 485, s. 10.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, in subdivision (a)(5) substituted "If the taxpayer has a" for "The amount of any" at the beginning, inserted "that part of the loss that is", and inserted "and deducted in".

§ 105-151.2. Credit for solar energy equipment.

(a) A person or partnership who causes to be constructed or installed solar energy equipment for water heating, space heating or cooling, or electricity in any building in North Carolina is allowed a credit against the tax imposed by this Division equal to forty percent (40%) of the installation and equipment cost of the solar energy equipment. A credit allowed under this section shall not exceed one thousand five hundred dollars ($1,500) per system or per year on any single building or for each family dwelling unit of a multi-dwelling building that is individually metered for electric power or natural gas or has a separate furnace for oil heat paid for by the occupant. To obtain the credit the taxpayer must own or control the use of the building at the time of the installation, except that in the case of a building constructed or modified for sale in which solar energy equipment is constructed or installed, the credit shall be allowed to the owner who first occupies the building for use after the construction or installation of the equipment or the owner-lessor who first leases the building for use after the construction or installation of the equipment. The credit shall not be allowed to the extent that any of the cost of the equipment was provided by federal, State, or local grants. If the credit allowed by this section exceeds the taxes imposed by this Division reduced by all other credits allowed, except payments of tax made by or on behalf of the taxpayer, the excess shall be allowed against the taxes imposed by this Division for the next five succeeding years.

(b) In the case of property owned by the entirety, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(c) For the purpose of this section, the term "solar energy equipment for water heating, space heating or cooling, or electricity" means any solar energy equipment for water heating, space heating or cooling, or electricity that meets the performance criteria approved and published by the Secretary. (1977, c. 792, s. 3; 1979, c. 892, s. 2; 1981, c. 921, ss. 5, 6; 1989, c. 728, s. 1.7; 1991 (Reg. Sess., 1992), c. 930, s. 16; 1993 (Reg. Sess., 1994), c. 584, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, substituted "energy equipment" for "hot water, heating, and cooling" in the section catchline; and rewrote subsections (a) and (c).

§ 105-151.6. Credit for construction of a fuel ethanol distillery.

(a) Credit Allowed. — Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses shall be allowed a credit against the tax imposed by this Division. Subject to the limitation provided in subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the Secretary of Revenue. The credit allowed by this section shall not exceed the amount of the tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer.

(b) Definitions. — For purposes of this section:

(1) "Alternative fuel source" includes agricultural and forestry products, waste petroleum products, and peat, but does not include other petroleum products, coal, or natural gas.

(2) "Qualified uses" of the ethanol made by the distillery are limited to use as a fuel by motor vehicles or airplanes, use as a de-icer, and use in processes associated with the removal of pollutants from coal and other sources of fuel. More than eighty percent (80%) of the ethanol made by the distiller must be intended for qualified uses in order to be eligible for the credit allowed by this section.

(3) A "distillery" includes only equipment associated with making, storing, and distributing ethanol and the related and necessary support facilities all of which are located and regularly used on the same premises.

(c) Application. — The credit may not be taken for the year in which the payments for construction and installation are made but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the payments were made. To be eligible for the credit, a taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 following the calendar year in which the payments were made. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation the Secretary may require.

(d) Ceiling. — The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed two million five hundred thousand dollars ($2,500,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (c). If the total amount of tax credits claimed for payments made in a calendar year exceeds two million five hundred thousand dollars ($2,500,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. Provided, however, if the total amount of tax credits claimed under G.S. 105-130.27 for payments made in the calendar year is less than two million five hundred thousand dollars ($2,500,000), the Secretary shall allow an additional amount of credit under this subsection, allocated proportionally among applicants, until the total amount of all tax credits allowed equals five million dollars ($5,000,000).

In no case may the total amount of all tax credits allowed under G.S. 105-130.27 and this section for payments made in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next succeeding ten years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (c). In such a reapplication, the payments for which a credit is claimed shall be considered as if they had been made in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (c) are final and shall not be adjusted to account for credits applied for but not claimed.

(e) Carry-forward. — The amount of the credit allowed under this section may be carried forward for the next succeeding ten taxable years.

(f) Repealed by Session Laws 1991, c. 45, s. 6, effective April 22, 1991.

(g) Expiration. — This section applies only to costs incurred during taxable years beginning prior to January 1, 1998. (1979, 2nd Sess., c. 1265, s. 3; 1987, c. 872, s. 2; 1989, c. 728, s. 1.10; 1991, c. 45, s. 6; 1991 (Reg. Sess., 1992), c. 913, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 35.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (g) substituted "1998" for "1996."

§ 105-151.7. Credit for installation of a hydroelectric generator.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 561, s. 104.1 (c) to (c7) and (d) establish the Child Day Care Loan Guarantee Act of 1993, the purpose of which is to encourage lenders to make loans available to child day care providers to finance the development and expansion of child day care centers and homes in low-income, distressed counties of the State (as designated by the Secretary of Commerce under G.S. 105-130.40(c) or 105-151.17(c) or both) and to increase the availability of child day care and employment opportunities in these areas.

§ 105-151.8. Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.

(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this Division equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy equipment. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000) for any single installation. This credit shall not be allowed to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except payments of tax made by or on behalf of the taxpayer. In no case shall a tax credit be allowed under both this section and G.S. 105-151.2.

(b) In the case of property owned by the entirety, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(c) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun. (1981, c. 921, s. 2; 1983 (Reg. Sess., 1984), c. 1105, s. 1; 1989, c. 728, s. 1.13; 1989 (Reg. Sess., 1990), c. 814, s. 18; 1991 (Reg. Sess., 1992), c. 930, s. 18; 1993 (Reg. Sess., 1994), c. 584, s. 5.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective for taxable years beginning on or after January 1, 1994, in the section catchline inserted "energy" and susbtituted "heat or electricity in certain processes" for "industrial or process heat"; in subsection (a) in the first sentence inserted "or electricity" following "production of heat", substituted "equal to thirty-five percent (35%)" for "an amount equal to twenty percent (20%)" and twice inserted "energy" preceding "equipment", in the second sentence substituted "twenty-five thousand dollars ($25,000)" for "eight thousand dollars ($8,000)," in the third sentence substituted "equipment" for "system," and in the fourth sentence inserted "energy"; in subsection (c) inserted "energy"; and made stylistic changes.

§ 105-151.11. Credit for child care and certain employment-related expenses.

(a) Credit. — A person who is allowed a credit against federal income tax for a percentage of employment-related expenses under section 21 of the Code shall be allowed as a credit against the tax imposed by this Division an amount equal to the applicable percentage of the employment-related expenses as defined in section 21(b)(2) of the Code. In order to claim the credit allowed by this section, the taxpayer must provide with the tax return the information required by the Secretary.

(a1) Applicable Percentage. — For employment-related expenses that are incurred only with respect to one or more dependents who are seven years old or older and are not physically or mentally incapable of caring for themselves, the applicable percentage is the appropriate percentage in the column labeled "Percentage A" in the table below, based on the taxpayer's adjusted gross income determined under the Code. For employment-related expenses with respect to any other qualifying individual, the applicable percentage is the appropriate percentage in the column labeled "Percentage B" in the table below, based on the taxpayer's adjusted gross income determined under the Code.

Filing Status	**Adjusted Gross Income**	**Percentage A**	**Percentage B**
Head of Household	Up to $20,000	9%	13%
	Over $20,000 up to $32,000	8%	11.5%
	Over $32,000	7%	10%
Surviving Spouse or Joint Return	Up to $25,000	9%	13%
	Over $25,000 up to $40,000	8%	11.5%
	Over $40,000	7%	10%
Single	Up to $15,000	9%	13%
	Over $15,000 up to $24,000	8%	11.5%
	Over $24,000	7%	10%
Married Filing Separately	Up to $12,500	9%	13%
	Over $12,500 up to $20,000	8%	11.5%
	Over $20,000	7%	10%

(b) Employment Related Expenses. — The amount of employment-related expenses for which a credit may be claimed may not exceed two thousand four hundred dollars ($2,400) if the taxpayer's household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and may not exceed four thousand eight hundred dollars ($4,800) if the taxpayer's household includes more than one qualifying individual.

(c) Limitations. — No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State. (1981, c. 899, s. 1; 1985, c. 656, ss. 8-11; 1989, c. 728, s. 1.16; 1993, c. 432, s. 1.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, and applicable to taxable years beginning on or after that date, in subsection (a) added the subsection catchline and added the last sentence; added the subsection (a1) designation and catchline; in the first sentence of subsection (a1) substituted "the appropriate percentage in the column labeled "Percentage A" in the table below, based on the taxpayer's adjusted gross income determined under the Code" for "seven percent (7%)"; and in the last sentence of subsection (a1), substituted "the appropriate percentage in the column labeled "Percentage B" in the table below, based on the taxpayer's adjusted gross income determined under the Code"; added the table following subsection (a1); added the subsection catchline in subsection (b); and in subsection (c), added the subsection catchline and deleted the former first sentence which read "No credit shall be allowed under this section unless the taxpayer completes and attaches to the tax return the necessary form or forms as may be required by the Secretary".

§ 105-151.12. Credit for certain real property donations.

(a) A person who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances are not eligible for this credit. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of one hundred thousand dollars ($100,000), to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before December 31, 1998, to qualify for the credit allowed by this section. (1983, c. 793, s. 3; 1985, c. 278, s. 2; 1989, c. 716, s. 2; c. 727, s. 218(43); c. 728, s. 1.17; 1989 (Reg. Sess., 1990), c. 869, s. 3; 1991, c. 45, s. 10; c. 453, ss. 2, 4; 1991 (Reg. Sess., 1992), c. 930, s. 21; 1993 (Reg. Sess., 1994), c. 717, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 7, 1994, substituted "December 31, 1998" for "December 31, 1994" in subsection (e).

§ 105-151.17. Credit for creating jobs in severely distressed county.

(a) Credit. — A person who (i) for at least 40 weeks during the year has at least nine employees and (ii) whose business is located, for part or all of his taxable year, in a severely distressed county may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the business in the severely distressed county during that year. A person who hires an additional full-time employee during that year to fill a position located in a severely distressed county is allowed a credit of two thousand eight hundred dollars ($2,800) for the additional employee. A position is located in a county if (i) at least fifty percent (50%) of the employee's duties are performed in the county, or (ii) the employee is a resident of the county. The credit may not be taken in the income year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the income year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit. If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit or the position filled by the employee is moved to another county, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under subsection (e) of this section.

For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(b) Repealed by Session Laws 1989, c. 111, s. 2.

(b1) Eligibility. — A taxpayer is eligible for the tax credit allowed by this section only if the taxpayer obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that the taxpayer engages in the manufacturing of goods, or that he engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or of finished products.

(c) County Designation. — A severely distressed county is a county designated as severely distressed by the Secretary of Commerce. Each year, on or before December 31, the Secretary of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the fifty highest in the State. The Secretary shall assign to each county in the State a distress factor that is the sum of the following:

(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.
(2) The county's rank in a ranking of counties by per capita income from highest to lowest.
(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. A designation as a severely distressed county is effective only for the calendar year following the designation.

(d) Planned Expansion. — A person who, during the year in which a county is designated as a severely distressed county, signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in that distressed county within two years of the date the letter is signed qualifies for the credit allowed by this section even though the employees are not hired that year. The credit shall be available in the income year after at least twenty employees have been hired if such hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection, except that if the county is no longer designated a severely distressed county after the year the letter of commitment was signed, the credit is still available. If the taxpayer does not hire the employees within the two-year period, he does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, he may take the credit under that subsection.

(e) Limitations. — The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A taxpayer may, however, take any installment of or carried-over portion of a credit that his predecessor could have taken if he had taxable income. Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the taxpayer.

Any unused portion of the credit may be carried forward for the succeeding five years.

(f) Substantiation. — Every person claiming the credit provided in subsection (a) shall maintain and make available for inspection by the Secretary of Revenue or his agent such records as may be necessary to determine and verify the amount of the credit to which the person is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the person, and no credit shall be allowed to any person who fails to maintain adequate records or to make them available for inspection. (1987, c. 568, s. 2; 1989, c. 111, s. 2; c. 751, ss. 7(7), 8(11); c. 753, s. 4.1(c), (d); 1991, c. 517, s. 2; 1991 (Reg. Sess., 1992), c. 959, s. 21; 1993, c. 45, s. 2; c. 485, s. 11.)

Editor's Note. —

Session Laws 1993, c. 45, which amended this section, in s. 3 provides: "By July 15, 1993, the Secretary of Commerce shall give the Secretary of Revenue a list of the 17 counties that this act adds to the category of severely distressed counties. In compiling this list, the Secretary of Commerce shall use the same data that was available when the list of 33 counties was compiled for submission by December 31, 1992."

Effect of Amendments. —

Session Laws 1993, c. 45, s. 2, effective for taxable years beginning on or after January 1, 1993, inserted "fifty" for "thirty-three" in subsection (c).

Session Laws 1993, c. 485, s. 11, effective July 23, 1993, substituted "State Planning Officer" for "State Budget Officer" in subsection (c).

§ 105-151.20. Credit for tax paid on certain government retirement benefits.

CASE NOTES

Cited in Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

§ 105-151.22. (For expiration date see note) Credit for North Carolina State Ports Authority wharfage and handling charges on exports.

(a) Credit. — A taxpayer who is a cargo owner utilizing the deep water docks at the Wilmington or Morehead City port for the movement of export cargo onto an ocean carrier calling at either State-owned port terminal, without consideration of the free-on-board (FOB) terms under which the export cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling in, and through put charges assessed on the cargo owned by that cargo owner for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to break-bulk cargo, bulk cargo, and container cargo including less-than-container load cargo. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. — This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a taxpayer under this section is one million dollars ($1,000,000).

(c) Definitions. — For purposes of this section, the terms "handling in" and "wharfage" have the meanings provided in the State Ports Tariff Publications, "Wilmington Tariff, Terminal Tariff #6," and "Morehead City Tariff, Terminal Tariff #1." For purposes of this section, the term "through put" has the same meaning as "wharfage" but applies only to bulk products, both dry and liquid. (1991 (Reg. Sess., 1992), c. 977, s. 2; 1993 (Reg. Sess., 1994), c. 681, s. 2.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 977, s. 4 made this section effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996.

Session Laws 1991 (Reg. Sess., 1992), c. 977, which enacted this section, in s. 3, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 681, s. 3, provides: "The North Carolina State Ports Authority shall report annually to the General Assembly regarding the impact of this act on shipping and economic growth. Each report shall show the overall annual increase in shipping at each port affected by this act for the most recent year for which data is available and for each of the previous 10 years. Each report shall estimate the number of jobs created at each port and in businesses related to port activity at each port since July 1, 1992, as compared to the number of similar jobs created during the 10 years preceding July 1, 1992. Each report shall state the net economic impact on the State as a result of the allowance of tax credits under this act. Each report shall include the number of persons using the tax credit who have stopped, or are likely to stop, using a North Carolina port when the credit expires and to then use a port in another state. The Ports Authority shall file a report on May 1 of 1993, 1994, and 1995, by submitting a copy to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Department of Revenue and the Department of Commerce shall cooperate with the Ports Authority in providing the information required in the annual reports."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, for taxable years beginning on or after January 1, 1994, rewrote subsection (a), deleted "under this Division" following "allowable" in the first sentence of subsection (b) and substituted "'handling in'" for "'handling'" in the first sentence of subsection (c).

§ 105-151.23. Credit for rehabilitating an historic structure.

A taxpayer who makes qualifying rehabilitation expenditures as defined in section 47 of the Code with respect to a certified historic structure located in this State is allowed as a credit against the tax imposed by this Division an amount equal to one-fourth of the federal income tax credit under the Code for which the taxpayer is eligible for those rehabilitation expenditures. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer. (1993, c. 527, s. 2.)

Editor's Note. — Session Laws 1993, c. 527, s. 3 makes this section effective for taxable years beginning on or after January 1, 1994.

§ 105-154. Information at the source returns.

(a) Repealed by Session Laws 1993, c. 354, s. 14, effective October 1, 1993.

(b) Information Returns of Payers. — A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. — A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Division. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form prescribed in G.S. 105-155.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

(d) Payment of Tax on Behalf of Nonresident Owner or Partner. — If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-134.2(a)(3). The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the profits of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 5; 1989, c. 728, s. 1.25; 1989 (Reg. Sess., 1990), c. 814, s. 19; 1991 (Reg. Sess., 1992), c. 930, s. 2; 1993, c. 314, s. 1; c. 354, s. 14.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 314, s. 1, effective for taxable years beginning on or after January 1, 1993, added the second paragraph of subsection (c).

Session Laws 1993, c. 354, s. 14, effective October 1, 1993, repealed former subsection (a), concerning the definition of "Person". For present similar provisions, see G.S. 105-228.90.

§ 105-157. When tax must be paid.

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. If the amount shown to be due is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 4, effective August 1, 1993. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 702, s. 1; c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 2; c. 1287, s. 5; 1989, c. 728, s. 1.29; 1989 (Reg. Sess., 1990), c. 984, s. 11; 1991 (Reg. Sess., 1992), c. 930, s. 4; 1993, c. 450, s. 4.)

Effect of Amendments. —

The 1993 amendment, effective August 1, 1993, in the title to this section substituted "When tax must be paid" for "Time and place of payment of tax"; deleted the subsection (a) designation; in the first sentence deleted "the face of", substituted "must be paid" for "shall be paid", substituted "within the time allowed" for "at the office where the return is filed at the time fixed by law"; and deleted former subsection (b), dealing with paying by uncertified check.

§ 105-159. Federal corrections.

If a taxpayer's federal taxable income is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file an income tax return with the Secretary reflecting the corrected or determined taxable income. The Secretary shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1939, c.

158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.31; 1993 (Reg. Sess., 1994), c. 582, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995, substituted the present section catchline for "Corrections and changes"; in the first paragraph, replaced the former first, second and third sentences with the present first sentence on the same matter, in the fourth sentence deleted "proceed to" preceding "determine", substituted "all available" for "such" and substituted "the taxpayer's correct tax liability for the taxable year" for "as may have been brought to his attention the correct North Carolina taxable income of the taxpayer for the taxable year, and if there is any additional tax due from the taxpayer it shall be assessed and collected; and if" and added the last sentence; in the second paragraph substituted the first two sentences for "there has been an overpayment of the tax the Secretary shall, within 30 days after the final determination of the North Carolina taxable income of the taxpayer, refund the amount of the excess: Provided, that any" and in the last sentence added "A" at the beginning, substituted "is" for "within the time specified shall be", substituted "the penalties in G.S. 105-236 and forfeits" for "all penalties as provided in G.S. 105-236, in case of additional tax due, and shall forfeit," and substituted "determination" for "change"; and deleted the last two paragraphs regarding the time for assessments or refunds after the taxpayer makes the return.

CASE NOTES

Effect on North Carolina Net Income Not Required. — This section does not require that the taxpayer's North Carolina net income be affected before it governs a taxpayer's duty to report changes in his federal net income. McFarland v. Justus, 113 N.C. App. 107, 437 S.E.2d 668 (1993), decision based on pre-1989 law.

Statute of Limitations Extended. — Failure to notify the Secretary of Revenue of the assessment of additional taxes by the Commissioner of Internal Revenue pursuant to this section extended the statute of limitations. McFarland v. Justus, 113 N.C. App. 107, 437 S.E.2d 668 (1993), decision based on pre-1989 law.

Division III. Income Tax — Estates, Trusts, and Beneficiaries.

§ 105-160.7. When tax must be paid.

(a) The full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 5, effective August 1, 1993. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 984, s. 13; 1991 (Reg. Sess., 1992), c. 930, s. 8; 1993, c. 450, s. 5.)

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, in the title to this section substituted "When tax must be paid" for "Time and place of payment of tax"; deleted the subsection (a) designation; in the first sentence deleted "the face of", substituted "must be paid" for "shall be paid", substituted "within the time allowed" for "at the office where the return is filed at the time fixed by law"; and deleted former subsection (b) dealing with payment by uncertified check.

§ 105-160.8. Federal corrections.

For purposes of this Division, the provisions of G.S. 105-159 requiring an individual to report the correction or determination of taxable income by the federal government apply to fiduciaries required to file returns for estates and trusts. (1989, c. 728, s. 1.38; 1993 (Reg. Sess., 1994), c. 582, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995, substituted the present section catchline for "Corrections and changes", substituted "the correction or" for "changes, corrections, or the", substituted "taxable income" for "net income" and substituted "federal government" for "Internal Revenue Service shall".

DIVISION V. TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

§ 105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.

The following definitions apply in this Division:

(1) Affiliate. — An individual or business that controls, is controlled by, or is under common control with another individual or business.

(2) Business. — A corporation, partnership, association, or sole proprietorship operated for profit.

(3) Control. — A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(4) Equity security. — Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(5) Financial institution. — A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v) a pension or profit-

§ 105-163.010 has a delayed repeal date. See notes.

sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars ($10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.

(6) Repealed by Session Laws 1991, c. 637.

(6a) North Carolina Enterprise Corporation. — A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.

(6b) Pass-through entity. — An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass- through entity is an individual or entity who is treated as an owner under the federal tax laws.

(7) Qualified business venture. — A North Carolina business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(8) Qualified grantee business. — A North Carolina business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(9) Repealed by Session Laws 1993, c. 443, s. 1, effective for taxable years beginning on or after January 1, 1994.

(9a) Real estate-related business. — A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related business or (ii) a business that is not

§ 105-163.010 has a delayed repeal date. See notes.

otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.

(9b) Selling or leasing at retail. — A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.

(9c) Service-related industry. — A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.

(10) Security. — A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).

(11) Subordinated debt. — Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 2; 1989 (Reg. Sess., 1990), c. 848, s. 2; 1991, c. 637, s. 1; 1993, c. 443, s. 1.)

Editor's Note. — Session Laws 1993, c. 443, s. 7 provides: "Division V of Article 4 of Chapter 105 of the General Statutes [§§ 105-163.010 to 105-163.014] is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999."

Effect of Amendments. —

The 1993 amendment, effective for taxable years beginning on or after January 1, 1994, rewrote the definition of Control in subdivision (3); added subdivision (6b); in subdivision (8) inserted "the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc."; deleted former subdivision (9), defining Qualified investment organization; and added subdivisions (9a), (9b), and (9c).

§ 105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.

(a) Corporations. — Subject to the limitations contained in G.S. 105-163.012, a corporation that purchases the equity securities of a North Carolina Enterprise Corporation directly from the Enterprise Corporation is allowed as a credit for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars ($750,000). The credit is allowed against one or more of the following taxes:

(1) The income tax imposed by Division I of this Article.
(2) The franchise tax imposed by G.S. 105-116, 105-120.2, and 105-122.
(3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.

The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section. This subsection does not apply to a corporation that is also a pass-through entity.

(b) Individuals. — Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of (i) a qualified business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise Corporation directly from that entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars ($50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. — Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation directly from the business or Corporation is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars ($750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

§ 105-163.011 has a delayed repeal date. See notes.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars ($50,000).

Each corporation that is an owner of a pass-through entity is allowed as a credit for the taxable year an amount equal to the corporation's allocated share of the tax credits for which the pass-through entity is eligible under this subsection as a result of the pass-through entity's investment in equity securities of a North Carolina Enterprise Corporation. The credit is allowed against one or more of the following taxes:

(1) The income tax imposed by Division I of this Article.
(2) The franchise tax imposed by G.S. 105-116, 105- 120.2, and 105-122.
(3) The gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8.

The aggregate amount of credit allowed a corporation for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed seven hundred fifty thousand dollars ($750,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year or if a corporate owner is not eligible for the credit because the investment was not made in a North Carolina Enterprise Corporation, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. — To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. — The penalties provided in G.S. 105-236 apply in this Division. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, ss. 3, 3.1; 1989 (Reg. Sess., 1990), c. 848, s. 3; 1991, c. 637, s. 2; 1993, c. 443, s. 2.)

Editor's Note. — Session Laws 1993, c. 443, s. 7 provides: "Division V of Article 4 of Chapter 105 of the General Statutes [§§ 105-163.010 to 105-163.014] is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999."

Effect of Amendments. —

The 1993 amendment, effective for taxable years beginning on or after January 1, 1994, rewrote subsections (a) and (b); added subsection (b1); and in subsection (c) deleted "of Revenue" following "Secretary" in the first sentence, and added the second, third, fifth, and sixth sentences.

§ 105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division I or II of this Article, the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate, for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. The fifty thousand dollar ($50,000) and seven hundred fifty thousand dollar ($750,000) limitations on the amount of credit allowed a taxpayer under G.S. 105-163.011 do not apply to unused amounts carried forward under this subsection.

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed twelve million dollars ($12,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds twelve million dollars ($12,000,000), the Secretary shall allow a portion of the credits claimed on the following basis:

(1) A total of six million dollars ($6,000,000) in tax credits for investments in North Carolina Enterprise Corporations shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.

(2) A total of six million dollars ($6,000,000) in tax credits for investments in qualified business ventures and qualified grantee businesses shall be allocated among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer.

(3) If the total amount of the credits claimed by taxpayers for the investments described in either subdivision (1) or (2) is less than six million dollars ($6,000,000), the Secretary shall allow additional credits for the investments described in the other subdivision until the total amount of all tax credits allowed equals twelve million dollars ($12,000,000).

(c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the investment was made. The Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied for but not claimed.

(d) Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10), the taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. "Allowable credit" means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, ss. 4, 4.1; 1989 (Reg. Sess., 1990), c. 848, s. 4; 1991, c. 637, s. 3; 1993, c. 443, s. 3; 1993 (Reg. Sess., 1994), c. 745, s. 8.)

Editor's Note. — Session Laws 1993, c. 443, s. 7 provides: "Division V of Article 4 of Chapter 105 of the General Statutes [§§ 105-163.010 to 105-163.014] is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999."

Effect of Amendments. — The 1993 amendment, effective for taxable years beginning on or after January 1, 1994, in the title to this section substituted "ceiling; reduction in basis" for "ceiling"; added the last sentence of subsection (a); in subdivision (b)(2) substituted "business ventures" for "investment organizations, qualified business ventures"; and added subsection (d).

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (d) substituted "Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5 (a)(10)" for "For purposes of this Article" and inserted "for the purposes of this Article".

§ 105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.

(a) Repealed by Session Laws 1993, c. 443, s. 4, effective for taxable years beginning on or after January 1, 1994.

(b) Qualified Business Ventures. — In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.

§ 105-163.013 has a delayed repeal date. See notes.

(1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis.

(2) It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment eligible for credit under this Division is made.

(3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.

(4) It does not engage as a substantial part of its business in any of the following:
  a. Providing a professional service as defined in Chapter 55B of the General Statutes.
  b. Construction or contracting.
  c. Selling or leasing at retail.
  d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
  e. Providing personal grooming or cosmetics services.
  f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.

(5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars ($5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application and that it has not moved its headquarters or principal business operations out of North Carolina.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal

§ 105-163.013 has a delayed repeal date. See notes.

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deadline. A qualified business venture may apply to have its registration reinstated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars ($1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars ($1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars ($5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.

(c) Qualified Grantee Businesses. — In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if all of the following are true as of the date the business files the required application:

(1) Its headquarters and principal business operations are in North Carolina or it has, as a condition to approval of the registration, agreed to establish its headquarters and principal business operations in North Carolina within three months after the date the first investment eligible for a credit under this Division is made.

(2) It has, as a condition to approval of the registration, agreed to retain its headquarters and principal business operations in North Carolina for at least three years after the date the last investment eligible for a credit under this Division is made.

(3) It has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovation Research Program.

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection.

(d) Application Forms; Rules; Fees. — Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to

§ 105-163.013 has a delayed repeal date. See notes.

furnish supporting information in addition to the information required by subsections (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete." A person who submits a false application is guilty of a Class 1 misdemeanor.

The fee for filing an application for registration under this section is one hundred dollars ($100.00). The fee for filing an application for renewal of registration under this section is fifty dollars ($50.00). The fee for filing an application for reinstatement of registration under this section is fifty dollars ($50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided.

(e) Revocation of Registration. — If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the business. The Secretary of State shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration each year as required under G.S. 105-163.013.

(f) Transfer of Registration. — A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, consolidation, or other similar transaction with another business and the surviving corporation would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company.

(g) Report by Secretary of State. — The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each busi-

§ 105-163.013 has a delayed repeal date. See notes.

ness, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs. (1987, c. 852, s. 1; 1991, c. 637, s. 4; 1993, c. 443, ss. 4, 9; c. 485, s. 12; c. 553, s. 80.1; 1994, Ex. Sess., c. 14, s. 50; 1993 (Reg. Sess., 1994), c. 745, ss. 9, 10.)

Editor's Note. — Session Laws 1993, c. 443, s. 9 was codified as subsection (g) of this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 443, s. 7 provides: "Division V of Article 4 of Chapter 105 of the General Statutes is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999."

Session Laws 1993, c. 443, s. 10 provides in part:

"A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

"Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

"Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 443, s. 4, effective January 1, 1994, deleted former subsection (a); in subsection (b) substituted the language beginning "an application and any supporting documents" and ending "files the required application" for "a financial statement certified by an independent certified public accountant for its most recent fiscal year showing revenues, as determined in accordance with generally accepted accounting procedures, of five million dollars ($5,000,000) or less on a consolidated basis and an application in which it certifies the following facts"; in subdivision (b)(1) substituted "to approval of the registration" for "of an investment eligible for a credit under this Division", substituted "the date the first investment eligible for a credit under this Division is made" for "the investment is made"; added subdivision (b)(1b); in subdivision (b)(2) substituted "to approval of the registration" for "of an investment eligible for a credit under this Division", substituted "date the last investment eligible for credit under this Division is made" for "investment is made"; in subdivision (b)(3) substituted "industry" for "industry; and"; in subdivision (b)(4) substituted "any of the following" for "construction, contracting, selling goods at retail, or the"; added subdivisions (b)(4)a. through (b)(4)c.; in subdivision (b)(4)d. inserted "The", inserted "or" preceding "development", inserted "purchasing, selling, or", inserted "notes, other indebtedness"; added subdivisions (b)(4)e., (b)(4)f., (b)(5), and (b)(6); added the first and third paragraphs following subdivision (b)(6); in the second paragraph following subdivision (b)(6) inserted "gross" preceding "revenues, as determined", substituted "principles" for "procedures" following "accepted accounting"; in the fourth paragraph following subdivision (b)(6) inserted "gross" preceding "revenues"; in subsection (c) substituted "and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if all of the following are true as of the date the business files the required application" for "in which the business certifies the following facts"; in subdivision (c)(1) substituted "to approval of the registration" for "of an investment eligible for a credit under this Division", substituted "date the first investment eligible for a credit under this Division is made" for "investment is made"; in subdivision (c)(2) substituted "to approval of the registration" for "of an investment eligible for a credit under this Division", substituted "date the last investment eligible for a credit under this Division is made" for "investment is made; and"; in subdivision (c)(3) inserted "the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc."; added the first paragraph following subdivision (c)(3); in subsection (d) substituted "registration, renewal of registration, and reinstatement" for "registration and for renewal", substituted "the form required by the Secretary of State" for "such form as the Secretary of State may prescribe", added the last sentences of the first and second paragraphs, added the third paragraph; added the last sentence of subsection (e); and added subsection (f).

Session Laws 1993, c. 485, s. 12, as amended by Session Laws 1993, c. 553, s. 12, effective July 23, 1993, substituted "business, as defined in G.S. 143-128" for "business enterprise" in the third paragraph of subsection (d) as amended by Session Laws 1993, c. 443.

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and is punishable as provided in G.S. 14-3" in subsection (d).

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (d), in the first paragraph, inserted "of State" following "Secretary" throughout, and in the second sentence substituted "subsections (b) and (c)" for "subsections (a), (b) and (c)", and in the second paragraph substituted "is" for "shall be" in three places; and in subsection (g) added the subsection catchline.

§ 105-163.014. (Repealed effective for investments made on or after January 1, 1999) Forfeiture of credit.

(a) Participation in Business. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, the taxpayer participates in the operation of the qualified business venture or qualified grantee business. For the purpose of this section, a taxpayer participates in the operation of a qualified business venture or a qualified grantee business if the taxpayer, the taxpayer's spouse, parent, sibling, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business venture or qualified grantee business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides services to a qualified business venture or a qualified grantee business, whether as an officer, a member of the board of directors, or otherwise does not participate in its operation if the person receives as compensation only reasonable reimbursement of expenses incurred in providing the services, participation in a stock option or stock bonus plan, or both.

§ 105-163.014 has a delayed repeal date. See notes.

(b) False Application. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business forfeits the credit if the registration of the qualified business venture or qualified grantee business is revoked because information in the registration application was false at the time the application was filed with the Secretary of State.

(c) Location Out-of-State. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business does not forfeit the credit if the business fails to renew its registration, except that a taxpayer forfeits the credit if the qualified business venture (i) moves its headquarters or its principal business operations outside this State within three years after the date of the taxpayer's investment or (ii) in the case of a business that promised to move its headquarters and principal business operations to this State as a condition to approval of its registration, fails to comply with this condition.

(d) Transfer or Redemption of Investment. — A taxpayer who has received a credit under this Division for an investment in a North Carolina Enterprise Corporation, a qualified business venture, or a qualified grantee business forfeits the credit in the following cases:

(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:
   a. The death of the taxpayer.
   b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
   c. A merger, consolidation, or similar transaction requiring approval by the shareholders of the North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(2) Within five years after the investment was made, the North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment.

In the event the taxpayer transfers fewer than all the securities in a manner that would result in a forfeiture, the amount of the credit that is forfeited is the product obtained by multiplying the aggregate credit attributable to the investment by a fraction whose numerator equals the number of securities transferred and whose denominator equals the number of securities received on account of the investment to which the credit was attributable. In addition, if the redemption amount is less than the amount invested by the taxpayer in the securities to which the redemption is attributable, the amount of the credit that is forfeited is further reduced by multiplying it by a fraction

§ 105-163.014 has a delayed repeal date. See notes.

whose numerator equals the redemption amount and whose denominator equals the aggregate amount invested by the taxpayer in the securities involved in the redemption. The term "redemption amount" means all amounts paid that are treated as a distribution in part or full payment in exchange for securities under section 302(a) of the Code.

(e) Effect of Forfeiture. — A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1987, c. 852, s. 1; 1991, c. 637, s. 5; 1993, c. 443, s. 5.)

Editor's Note. — Session Laws 1993, c. 443, s. 7 provides: "Division V of Article 4 of Chapter 105 of the General Statutes [§§ 105-163.010 to 163-0.14] is repealed effective for investments made on or after January 1, 1999. Division V of Article 4 of Chapter 105 of the General Statutes will remain in effect for investments made before January 1, 1999."

Session Laws 1993, c. 443, s. 10 provides in part:

"A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Division V of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

"Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

"Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Division V of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, rewrote this section.

ARTICLE 4A.

Withholding of Income Taxes from Wages and Payment of Income Tax by Individuals.

§ 105-163.1. Definitions.

The following definitions apply in this Article:

(1) Code. — Defined in G.S. 105-228.90.

(2) Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5, effective January 1, 1991.

(3) Dependent. — An individual with respect to whom an income tax exemption is allowed under the Code.

(4) Employee. — An individual, whether a resident or a nonresident of this State, who performs services in this State for wages or an individual who is a resident of this State and performs services outside this State for wages. The term includes an ordained or licensed clergyman who elects to be considered an employee under G.S. 105-163.1A, an officer of a corporation, and an elected public official.

(5) Employer. — A person for whom an individual performs services for wages. In applying the requirements to withhold income taxes from wages and pay the withheld taxes, the term includes a person who:

a. Controls the payment of wages to an individual for services performed for another.

b. Pays wages on behalf of a person who is not engaged in trade or business in this State.

c. Pays wages on behalf of a unit of government that is not located in this State.

d. Pays wages for any other reason.

(6), (7) Repealed by Session Laws 1989 (Regular Session, 1990), c. 945, s. 5, effective January 1, 1991.

(8) Fiduciary. — A guardian, a trustee, an executor, an administrator, a receiver, a conservator, or other person acting in a fiduciary capacity for another.

(9) Fiscal year. — Defined in section 441(e) of the Code.

(10) Individual. — A natural person.

(11) Miscellaneous payroll period. — A payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

(12) Payroll period. — A period for which an employer ordinarily pays wages to an employee of the employer.

(13) Person. — Defined in G.S. 105-228.90.

(14) Taxable year. — Defined in section 441(b) of the Code.

(14a) Secretary. — The Secretary of Revenue.

(15) Wages. — The term has the same meaning as in section 3401 of the Code except it does not include remuneration paid by a farmer for services performed on the farmer's farm in producing or harvesting agricultural products or in transporting the agricultural products to market. (1959, c. 1259, s. 1; 1967, c. 716, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 5; 1979, c. 801, s. 70; 1983, c. 713, ss. 79, 82; 1985, c. 394, s. 1; c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 5; 1989, c. 36, s. 5; c. 728, s. 1.40; 1989 (Reg. Sess., 1990), c. 945, s. 5; c. 981, s. 6; 1991, c. 689, s. 255; 1991 (Reg. Sess., 1992), c. 922, s. 7; 1993, c. 12, s. 9; c. 354, s. 15.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 12, s. 9, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date".

Session Laws 1993, c. 354, s. 15, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for the former language of subdivision (13).

§ 105-163.6. When employer must file returns and pay withheld taxes.

(a) General. — A return is due quarterly or monthly as specified in this section. A return shall be filed with the Secretary on a form prepared by the Secretary, shall report any payments of withheld taxes made during the period covered by the return, and shall contain any other information required by the Secretary.

Withheld taxes are payable quarterly, monthly, or semiweekly, as specified in this section. If the Secretary finds that collection of the amount of taxes this Article requires an employer to withhold is in jeopardy, the Secretary may require the employer to file a return or pay withheld taxes at a time other than that specified in this section.

(b) Quarterly. — An employer who withholds an average of less than five hundred dollars ($500.00) of State income taxes from wages each month shall file a return and pay the withheld taxes on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(c) Monthly. — An employer who withholds an average of at least five hundred dollars ($500.00) but less than two thousand dollars ($2,000) from wages each month shall file a return and pay the withheld taxes on a monthly basis. A return for the months of January through November is due by the 15th day of the month following the end of the month covered by the return. A return for the month of December is due the following January 31.

(d) Semiweekly. — An employer who withholds an average of at least two thousand dollars ($2,000) of State income taxes from wages each month shall file a return by the date set under the Code for filing a return for federal employment taxes attributable to the same wages and shall pay the withheld State taxes by the date set under the Code for depositing or paying federal employment taxes attributable to the same wages. The date set by the Code for depositing or paying federal employment taxes shall be determined without regard to § 6302(g) of the Code.

An extension of time granted to file a return for federal employment taxes attributable to wages is an automatic extension of time for filing a return for State income taxes withheld from the same wages, and an extension of time granted to pay federal employment taxes attributable to wages is an automatic extension of time for paying State income taxes withheld from the same wages. An employer who pays withheld State income taxes under this subsection is not subject to interest on or penalties for a shortfall in the amount due if the employer would not be subject to a failure-to-deposit penalty had the shortfall occurred in a deposit of federal employment taxes attributable to the same wages and the employer pays the shortfall by the date the employer would have to deposit a shortfall in the federal employment taxes.

(e) Category. — The Secretary shall monitor the amount of taxes withheld by an employer or estimate the amount of taxes to be withheld by a new employer and shall direct each employer to pay withheld taxes in accordance with the appropriate schedule. An employer shall file a return and pay withheld taxes in accordance with the Secretary's direction until notified in writing to file and pay under a different schedule. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; c. 1287, s. 7; 1975, 2nd Sess., c. 979, s. 1; 1977, c. 488; 1987, c. 622, s. 9; c. 813, s. 24; 1989 (Reg. Sess., 1990), c. 945, s. 10; 1993, c. 450, s. 6; 1993 (Reg. Sess., 1994), c. 661, s. 1.)

Effect of Amendments. —

The 1993 amendment, effective August 1, 1993, deleted the former second sentence of the second paragraph of subsection (a), which read "Withheld taxes shall be paid to the Secretary or to a financial institution with which the Secretary has entered a contract to receive payment of withheld taxes."

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995 and applicable to payments of withheld income taxes made on or after that date, in subsection (a), in the second paragraph, in the first sentence substituted "semiweekly" for "within three banking days"; and in subsection (d), substituted the present catchline for "Three Banking Days," in the first paragraph, in the first sentence substituted "employment taxes attributable to" for "income taxes withheld from" twice and in the second sentence substituted "employment taxes" for "income taxes withheld from wages," in the second paragraph, in the first sentence substituted "employment taxes attributable to" for "income taxes withheld from" twice, in the second sentence substituted "a shortfall in the" for "an underpayment of an" and substituted the language at the end beginning "employer would not be subject" and ending "federal employment taxes" for "employer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the employer files."

§ 105-163.6A. Federal corrections.

If the amount of taxes an employer is required to withhold and pay under the Code is corrected or otherwise determined by the federal government, the employer must, within two years after being notified of the correction or final determination by the federal government, file a return with the Secretary reflecting the corrected or determined amount. The Secretary shall determine from all available evidence the correct amount the employer should have paid under this Article for the period covered by the federal determination. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the employer as provided in Article 9 of this Chapter. If there has been an overpayment of the tax, the Secretary shall either refund the overpayment to the employer in accordance with G.S. 105-163.9 or credit the amount of the overpayment to the individual in accordance with G.S. 105-163.10. An employer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. Failure of an employer to comply with this section does not, however, affect an individual's right to a credit under G.S. 105-163.10. (1993 (Reg. Sess., 1994), c. 582, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 582, s. 7, made this section effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995.

§ 105-163.7. Statement to employees; information to Secretary.

(a) Every employer required to deduct and withhold from an employee's wages under G.S. 105-163.2 shall furnish to each such employee in respect to the remuneration paid by such employer to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days from the date on which the last payment of remuneration is made, duplicate copies of a written statement showing the following:

(1) The name of such person;
(2) The name of the employee and his social security account number;
(3) The total amount of wages;
(4) The total amount deducted and withheld under G.S. 105-163.2.

(b) The Secretary may require an employer to include information not listed in subsection (a) on the employer's written statement to an employee and to file the statement at a time not required by subsection (a). Every employer shall file an annual report with the Secretary that contains the information given on each of the employer's written statements to an employee and other information required by the Secretary. The annual report is due on the same date the employer's federal information return of federal income taxes withheld from wages is due under the Code. The report required by this subsection is in lieu of the report required by G.S. 105-154.

(c) An employer who is required to file an annual report under subsection (b) of this section must report to the Secretary the following information concerning compliance with Article 1 of Chapter 97 of the General Statutes, the Workers' Compensation Act:

(1) Whether the employer is required to maintain insurance or qualify as a self-insured employer under the provisions of G.S. 97-93.
(2) Whether the employer is insured, self-insured through a group, or individually self-insured.
(3) The name of the employer's workers' compensation insurance carrier and the number and expiration date of the insurance policy if the employer has workers' compensation insurance.
(4) The name of the self-insured group, the group's third-party administrator, and the group's or employer's self-insured code number used by the Department of Insurance, if the employer is a member of a self-insured group.
(5) The name of the employer's third-party administrator and the employer's self-insured code number used by the Department of Insurance, if the employer is individually self-insured.
(6) Whether any information reported to the Secretary on a previous return has changed.

The Secretary must compile the information concerning workers' compensation reported by employers on an annual report and must give the compiled data to the Industrial Commission. (1959, c. 1259, s. 1; 1973, c. 476, s. 193; 1989 (Reg. Sess., 1990), c. 945, s. 11; 1993 (Reg. Sess., 1994), c. 679, s. 8.3.)

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 679, "The Workers' Compensation Reform Act of 1994," in s. 8.3, effective July 5, 1994, added subsection (c).

§ 105-163.16. Overpayment refunded.

If the amount of wages withheld at the source under G.S. 105-163.2 exceeds the tax imposed by Article 4 of this Chapter against which the withheld tax is credited under G.S. 105-163.10, the excess is considered an overpayment by the employee. If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax is credited under the provisions of this Article, the excess is considered an overpayment by the taxpayer. An overpayment shall be refunded as provided in Article 9 of this Chapter. (1959, c. 1259, s. 1; 1967, c. 702, s. 2; 1973, c. 476, s. 193; c. 903, s. 3; 1975, c. 74, s. 2; 1979, c. 801, s. 71; 1981 (Reg. Sess., 1982), c. 1223, s. 1; 1983, c. 663, s. 2; c. 865, s. 1; 1985, c. 443, s. 3; 1987 (Reg. Sess., 1988), c. 1063, s. 2; 1989, c. 728, s. 1.45; 1989 (Reg. Sess., 1990), c. 814, s. 23; 1991, c. 45, s. 22; 1993, c. 315, s. 2.)

Editor's Note. —

Session Laws 1993, c. 315, which amended this section, in s. 4 provides that the amendment applies to overpayments reflected in final returns filed on or after the date of ratification. The act was ratified on July 9, 1993.

Effect of Amendments. —

The 1993 amendment, effective July 9, 1993, deleted the subsection (a) designation, at the beginning of the first sentence substituted "If" for "When"; in the first sentence substituted "withheld tax is" for "tax so withheld may be" and "is" for "shall be"; deleted the subsection (b) designation, in the second sentence substituted "is" for "so paid may be" and "is" for "shall be", and added the third sentence; deleted subsection (c) concerning exceptions to taxpayer refunds for overpayment; and deleted the designations and repeal line for subsections (d) to (f). As to the applicability of this amendment, see the Editor's Note.

ARTICLE 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.38. Definitions.

The following definitions apply in this Article, unless the context requires otherwise:

(1) Code. — Defined in G.S. 105-228.90.

(1a) Corporation. — Defined in section 7701 of the Code.

(2) Estimated tax. — The amount of income tax the corporation estimates as the amount imposed by Article 4 for the taxable year.

(3) Fiscal year. — An accounting period of 12 months ending on the last day of any month other than December.
(4) Secretary. — The Secretary of Revenue.
(5) Taxable year. — The calendar year or fiscal year used as a basis to determine net income under Article 4. If no fiscal year has been established, "fiscal year" means the calendar year. In the case of a return made for a fractional part of the year under Article 4, or under rules prescribed by the Secretary, "taxable year" means the period for which the return is made. (1959, c. 1259, s. 1A; 1973, c. 476, s. 193; 1983, c. 713, s. 86; 1989 (Reg. Sess., 1990), c. 984, s. 15; 1991 (Reg. Sess., 1992), c. 922, s. 8; 1993, c. 12, s. 10.)

Effect of Amendments. — The 1993 amendment, effective for taxable years beginning on or after January 1, 1993, substituted "Defined in G.S. 105-228.90" for "The Internal Revenue Code as enacted as of January 1, 1992, including any provisions enacted as of that date which become effective either before or after that date".

§ 105-163.43. Overpayment refunded.

If the amount of estimated tax paid under this Article exceeds the taxes against which the estimated tax is credited pursuant to this Article, the excess is considered an overpayment by the taxpayer and shall be refunded as provided in Article 9 of this Chapter. (1959, c. 1259, s. 1A; 1967, c. 1110, s. 5; 1973, c. 476, s. 193; 1983, c. 713, s. 86; 1993, c. 315, s. 1.)

Editor's Note. — Session Laws 1993, c. 315, which amended this section, in s. 4 provides that the amendment applies to overpayments reflected in final returns filed on or after the date of ratification. The act was ratified on July 9, 1993.

Effect of Amendments. — The 1993 amendment, effective July 9, 1993, rewrote this section. As to the applicability of this amendment, see the Editor's Note.

§ 105-163.44. (Effective October 1, 1994 — See editor's note) Willful failure to pay estimated tax.

Any person required by this Article to pay any estimated tax who willfully fails to pay the estimated tax at the time or times required by law or rules shall, in addition to other penalties provided by law, be guilty of a Class 2 misdemeanor. (1959, c. 1259, s. 1A; 1983, c. 713, s. 86; 1993, c. 539, s. 703; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six months, or both".

ARTICLE 5.

Schedule E. Sales and Use Tax.

DIVISION I. TITLE, PURPOSE AND DEFINITIONS.

§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(2) Reserved.

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" means maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial. It also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It also means making a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within such limits owned by or ceded to the United States of America.

(7a) "Lease or rental" means a transfer, for consideration, of the use but not the ownership of property to another for a period of time.

(8) "Mail order sale" means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(8a) "Manufactured home" means a structure that is designed to be used as a dwelling and:
a. Is built on a permanent chassis;
b. Is transportable in one or more sections;
c. When transported, is at least eight feet wide or forty feet long; and
d. When erected on a site, has at least 320 square feet.

(8b) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
a. A moped as defined in G.S. 20-4.01(27)(d1).
b. Special mobile equipment as defined in G.S. 20-4.01(44).
c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
d. A farm tractor or other implement of husbandry.
e. A manufactured home, a mobile office, or a mobile classroom.
f. Road construction or road maintenance machinery or equipment.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" has the same meaning as in G.S. 105-228.90.

(12) "Purchase" means acquired for a consideration whether
a. The acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;
b. The transfer was absolute or conditional regardless of the means by which it was effected; and
c. The consideration is a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) "Sale" or "selling" shall mean any transfer of title or possession, or both, exchange, barter, lease, license to use or consume, or rental of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, however effected and by whatever name called, for a consideration paid or to be paid, and includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property or consumed at the place at which such property is prepared, served or sold. A transaction whereby the possession of the property is transferred but the seller retains title or security for the payment of the price shall be deemed a sale.

(16) Except as provided in paragraph f., "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes

any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on aeronautic, automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

(16a) "Secretary" means the Secretary of the North Carolina Department of Revenue.

(16b) "State agency" means a unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access.

As used in this subdivision:

a. "Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c.

1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1.)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

Session Laws 1993 c. 354, s. 16, effective October 1, 1993, substituted "has the same meaning as in G.S. 105-228.90" for "includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi public and the plural as well as the singular number" in subdivision (11).

Session Laws 1993, c. 484, s. 1, effective October 1, 1993, substituted "home, a mobile office, or a mobile classroom" for "home" in subdivision (8b)e.

Session Laws 1993, c. 507, s. 1, effective July 24, 1993, in subdivision (16)e inserted "aeronautic".

CASE NOTES

Cited in In re Rock-Ola Cafe, 111 N.C. App. 683, 433 S.E.2d 236 (1993).

DIVISION II. TAXES LEVIED.

Part 1. Retail Sales Tax.

§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article.

(1c) The rate of one percent (1%) applies to the sales price of the following articles:

a. Horses or mules by whomsoever sold.

b. Semen to be used in the artificial insemination of animals.

c. Sales of fuel, other than electricity or piped natural gas, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.

d. Sales of fuel, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

e. Sales of fuel, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

(1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars ($80.00) per article.

a. Sales of machines and machinery, whether animal or motor drawn or operated, and parts and accessories for such machines and machinery to farmers for use by them in the planting, cultivating, harvesting or curing of farm crops, and sales of machines and machinery and parts and accessories for such machines and machinery to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry, eggs or livestock, except such machines, machinery, equipment, parts, and accessories that come within the provisions of G.S. 105-164.13(4c).

The term "machines and machinery" as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.

f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

(1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars ($1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

(3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term "persons who rent to transients" means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including "real estate brokers" as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

(4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

(4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e). Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article.

(4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property.

(4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(c) Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars ($15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.

A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this section to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.

A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c. 484, s. 2.)

Effect of Amendments. — Session Laws 1993, c. 372, s. 1, effective August 1, 1993, rewrote the current second paragraph of subsection (c) to provide that a sales tax license is void if the retailer reports no sales for eighteen months and, in the current third paragraph of subsection (c), substituted "the retailer's" for "his".

Session Laws 1993, c. 484, s. 2, effective October 1, 1993, added subdivision (a)(1e).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in In re Rock-Ola Cafe, 111 N.C. App. 683, 433 S.E.2d 236 (1993).

Part 3. Use Tax.

§ 105-164.6. Imposition of tax.

CASE NOTES

Food, such as peanuts, pretzels, and other "munchies" offered by respondent restaurants to customers purchasing beverages at their bars, meals offered without charge to restaurant managers, and matches provided free of charge to customers were not subject to use tax under subsection (a) because respondents included the cost of all the various items in their menu-item prices and collected sales taxes on those items. In re Rock-Ola Cafe, 111 N.C. App. 683, 433 S.E.2d 236 (1993), discretionary review improvidently granted, 336 N.C. 58, 441 S.E.2d 551 (1994).

Part 4. General Provisions.

§ 105-164.9. (Effective October 1, 1994 — See editor's note) Advertisement to absorb tax unlawful.

Any retailer who shall by any character or public advertisement offer to absorb the tax levied in this Article or in any manner directly or indirectly advertise that the tax herein imposed is not considered an element in the price to the purchaser shall be guilty of a Class 1 misdemeanor. Any violations of the provisions of this section reported to the Secretary shall be reported by him to the Attorney General of the State to the end that such violations may be brought to the attention of the solicitor of the court of the county or district whose duty it is to prosecute misdemeanors in the jurisdiction. It shall be the duty of such solicitor to investigate such alleged violations and if he finds that this section has been violated prosecute such violators in accordance with the law. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1993, c. 539, s. 704; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in the first sentence.

DIVISION III. EXEMPTIONS AND EXCLUSIONS.

§ 105-164.13. Retail sales and use tax.

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

Agricultural Group.

(1) Commercial fertilizer on which the inspection tax is paid and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.

(2) Seeds; remedies, vaccines, medications, litter materials, and feeds for livestock and poultry; rodenticides, insecticides, herbicides, fungicides, and pesticides for livestock, poultry, and agriculture; defoliants for use on cotton or other crops; plant growth inhibitors, regulators, or stimulators for agriculture including systemic and contact or other sucker control agents for tobacco and other crops.

(3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.

(4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

(4a) Baby chicks and poults sold for commercial poultry or egg production.

(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.

(4c) Commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosures, or structures.

(4d) The lease or rental of burlap tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.

Industrial Group.

(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered wholesale or retail merchants, for the purpose of resale except as modified by Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall not extend to or include retail sales to users or consumers not for resale.

(6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1, effective September 1, 1990.

(7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.

(8) Sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured.

(8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel used by the facility to generate electricity.

(9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of G.S. 113-152, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, "fish" is defined as in G.S. 113-129(7).

(10) Sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

Motor Fuels Group.

(11) Gasoline or other motor fuel on which the tax levied in G.S. 105-434 and/or G.S. 105-435 is due and has been paid, and the fact that a refund of the tax levied by either of said

sections is made pursuant to the provisions of Subchapter V of Chapter 105 shall not make the sale or the seller of such fuels subject to the tax levied by this Article.

Medical Group.

(12) Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to prescribe, and crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist, and orthopedic appliances designed to be worn by the purchaser or user.

(13) Medicines sold on prescription of physicians, dentists, or veterinarians; insulin whether or not sold on prescription.

(13a) Legend and non-legend drugs donated to a nonprofit organization to be used for a charitable purpose.

Printed Materials Group.

(14) Public school books on the adopted list, the selling price of which is fixed by State contract.

(14a) Printed material which is sold by a printer to a purchaser within or without this State, when such printed material is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State, if the purchaser does not thereafter use the printed material in this State.

Transactions Group.

(15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, provided, however, they must be added to gross sales if afterwards collected.

(16) Sales of any of the following articles:
  a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.
  b. An article repossessed by the vendor if tax was paid on the sales price of the article.

(17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

(18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars ($1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.

(19) Repealed by Session Laws 1991, c. 618, s. 1, effective August 1, 1991.

(20) Sales by blind merchants operating under supervision of the Department of Human Resources.

(21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.

(22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.

(23) Sales of wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

(24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Food sold not for profit by public or private school cafeterias within school buildings during the regular school day.

(26a) Food sold not for profit by a public school cafeteria to a child day care center that participates in the Child and Adult Care Food Program of the Department of Public Instruction.

(27) Meals and food products served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof.

(28) Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and sales of magazines by magazine vendors making door-to-door sales.

(29) Sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display, the purchases of which are financed in whole or in part by gifts or donations.

(29a) Sales to State agencies of works of art for a State building pursuant to Article 47A of Chapter 143 of the General Statutes. As used in this subdivision, the terms "works of art" and "State building" have the meanings provided in G.S. 143-408.3.

(30) Sales from vending machines when sold by the owner or lessee of said machines at a price of one cent (1¢) per sale.

(31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

(31a) Food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

(31b) Food purchased by either a wholesale merchant or a retailer in a wholesale sale and then withdrawn from inventory and donated by the wholesale merchant or retailer to a nonprofit organization to be used for a charitable purpose.

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis.

(33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated. "Export" shall include the acts of possessing and marshalling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. "Foreign country"

shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

(34) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities.

(35) Sales by a nonprofit civic, charitable, educational, scientific, literary or fraternal organization continuously chartered or incorporated within North Carolina for at least two years when such sales are conducted only upon an annual basis for the purpose of raising funds for its activities, and when the proceeds thereof are actually used for such purposes; provided, however, that no such sale shall be exempt if not actually consummated within 60 days after the first solicitation of any sale made during said organization's annual sales period.

(36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.

(37) Spirituous liquor. This exemption does not prohibit the levy of sales and use taxes on mixed beverages. As used in this subdivision, the terms "spirituous liquor" and "mixed beverage" have the same meanings as in G.S. 18B-101(14) and G.S. 18B-101(10) respectively.

(38) Food and other items lawfully purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program.

(39) Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredient or component parts of free circulation publications, and sales by printers of free circulation publica-

tions to the publishers of these publications. As used in this subdivision, the term "free circulation publications" means shoppers' guides that:

(1) Are published on a periodic basis at recurring intervals;
(2) Are mailed or are distributed house-to-house, by street distributors, in racks, or in any other manner at other locations without charge to the recipient;
(3) Contain advertising of a general nature; and
(4) Make space available to all advertisers for the purpose of inducing readers to purchase the goods and services of the advertisers.

The term does not include house organs or trade, professional, or similar types of publications. The ratio of news to advertising in a publication is not a factor in determining whether the publication is a free circulation publication.

(40) Sales to the Department of Transportation.

(41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1.)

Effect of Amendments. — Session Laws 1993, c. 484, s. 3, effective October 1, 1993, added subdivision (41).

Session Laws 1993, c. 513, s. 11 added "and supplemental foods purchased for direct distribution by the Special Supplemental Food Program" at the end of subdivision (38).

The 1993 (Reg. Sess., 1994) amendment, effective September 1, 1994, and applicable to sales made on or after that date, added subdivision (29a).

DIVISION IV. REPORTING AND PAYMENT.

§ 105-164.16. Report and payment of taxes.

(a) Payment. — Taxes levied under this Article are due when a return is required to be filed. Every taxpayer liable for the tax imposed by this Article shall, within the specified time after the end of the appropriate reporting period, submit a return to the Secretary on a form prescribed by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

A sales tax return must state the taxpayer's gross sales for the reporting period, the amount and type of sales made in the period that are exempt from tax under G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any other information required by the Secretary. A use tax return must state the cost price of tangible personal property that was purchased or received during the reporting period and is subject to tax under G.S. 105-164.6, the amount of tax due, and any other information required by the Secretary. Returns that do not contain the required information shall not be accepted. When an unacceptable return is submitted, the Secretary shall require a corrected return to be filed.

(b) General Reporting Periods. — Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than fifty dollars ($50.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars ($20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount he remitted with his estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed.

(c) Sales Tax on Utility Services. — A return for taxes levied under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c) is due quarterly or monthly as specified in this subsection. A utility that is allowed to pay tax under G.S. 105-120 on a quarterly basis shall file a quarterly return. All other utilities shall file a monthly return. A quarterly return is due by the last day of the month following the quarter covered by the return. A monthly return is due by the last day of the month following the month in which the taxes accrue, except the return for taxes that accrue in May. A return for taxes that accrue in May is due by June 25.

A utility that is required to file a monthly return may file an estimated return for the first month, the second month, or both the first and second months in a quarter. A utility is not subject to interest on or penalties for an underpayment submitted with an estimated monthly return if the utility timely pays at least ninety-five percent (95%) of the amount due with a monthly return and includes the underpayment with the company's return for the third month in the same quarter. (1957, c. 1340, s. 5; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1979, c. 801, s. 83; 1983 (Reg. Sess., 1984), c. 1097, s. 14; 1985, c. 656, s. 26; 1985 (Reg. Sess., 1986), c. 1007; 1987, c. 557, s. 6; 1989 (Reg. Sess., 1990), c. 945, s. 1; 1991, c. 690, s. 4; 1993, c. 450, s. 7.)

Effect of Amendments. —

The 1993 amendment, effective August 1, 1993, in the first paragraph of subsection (a) substituted "Secretary on a form prescribed by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent" for "Secretary, on a form prescribed by the Secretary, stating"; in the second paragraph of subsection (a) inserted at the beginning "A sales tax return must state", and substituted the present second sentence for the former second sentence, which read "Each return shall be accompanied by a payment to the Secretary for the amount of taxes shown to be due on the return and shall be signed by the taxpayer or his agent".

§§ 105-164.17, 105-164.18: Repealed by Session Laws 1993, c. 450, ss. 8, 9, effective August 1, 1993.

Cross References. — For present similar provisions, see G.S. 105-241.

DIVISION V. RECORDS REQUIRED TO BE KEPT.

§ 105-164.28. Certificate of resale.

CASE NOTES

Cited in In re Rock-Ola Cafe, 111 N.C. App. 683, 433 S.E.2d 236 (1993).

§ 105-164.29. (Effective October 1, 1994 — See editor's note) Application for licenses by wholesale merchants and retailers.

(a) Application. — Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth all information the Secretary may require. The application shall be signed as follows:

(1) By the owner, if the owner is an individual.
(2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.
(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

A wholesale merchant or retailer whose business extends into more than one county is required to secure only one license to cover all operations of the business throughout the State.

(b) Issuance. — When the required application has been made the Secretary shall issue a license to the applicant. A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the license. The license holder shall display the license conspicuously at all times at the place for which it was issued.

(c) Reissuance. — A person whose license has been previously suspended or revoked shall pay the Secretary fifteen dollars ($15.00) for the reissuance of the license. A wholesale merchant whose annual license has been previously suspended or revoked shall pay the Secretary twenty-five dollars ($25.00) for the reissuance of the license for the remainder of the license year.

(d) Revocation. — Whenever a license holder fails to comply with this Article, the Secretary, upon hearing, after giving the license holder 10 days' notice in writing, specifying the time and place of hearing and requiring the license holder to show cause why the license should not be revoked, may revoke or suspend the license. The notice may be served personally or by registered mail directed to the last known address of the license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars ($500.00) for each offense. (1957, c. 1340, s. 5; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1084; 1991, c. 690, s. 5; 1993, c. 354, s. 17; c. 539, s. 705; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 354, s. 29 is a severability clause.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 354, s. 17, effective October 1, 1993, added the subsection designations (a) through (d); added the subdivision designations (a)(1) through (a)(3); in subsection (a) added at the beginning "Application", substituted "as follows" for "by" following "shall be signed"; in subdivision (a)(1) added "By the owner, if", substituted "is an individual" for "if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by"; added subdivision (a)(2); in subdivision (a)(3) added at the beginning "By", substituted "if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written" for "to which shall be attached the written", substituted at the end "authority must be attached to the application" for "authority"; added "Issuance" at the beginning of subsection (b); added "Reissuance" at the beginning of subsection (c); and added "Revocation" at the beginning of subsection (d).

Session Laws 1993, c. 539, s. 705, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last paragraph inserted "Class 3" preceding "misdemeanor", and inserted "only" preceding "subject to a fine".

DIVISION VII. FAILURE TO MAKE RETURNS; OVERPAYMENTS.

§ 105-164.41. Excess payments; refunds.

If upon examination of any return made under this Article, it appears that an amount of tax has been paid in excess of that properly due, then the amount in excess shall be credited against any tax or installment thereof then due from the taxpayer, under any other subsequent return, or shall be refunded to the taxpayer by the Secretary out of any funds appropriated for that purpose. (1957, c. 1340, s. 5; 1963, c. 1169, s. 3; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; 1985, c. 656, s. 29; 1993, c. 257, s. 7.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, deleted "by certificate of overpayment issued" preceding "by the Secretary" and deleted "to the State Auditor, and the Auditor shall issue his warrant on the Treasurer, which warrant shall be payable" preceding "out of any funds."

DIVISION VIII. ADMINISTRATION AND ENFORCEMENT.

§ 105-164.44B. (Effective until June 30, 1995) Transfer to Wildlife Resources Fund of taxes on hunting and fishing supplies and equipment.

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of four million four hundred eighty-nine thousand four hundred eighty-seven dollars ($4,489,487) plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the

§ 105-164.44B is set out twice. See notes.

preceding fiscal year plus the cost of any legislative salary increase for employees of the Wildlife Resources Commission. (1983 (Reg. Sess., 1984), c. 1116, s. 88; 1987, c. 738, s. 150; 1989, c. 752, s. 159; 1993, c. 321, s. 290(a); 1993 (Reg. Sess., 1994), c. 769, s. 27.1(a).)

Section Set Out Twice. — The section above is effective until June 30, 1995. For the section as amended effective July 1, 1995, see the following section, also numbered § 105-164.44B.

Editor's Note. —

Session Laws 1993, c. 321, s. 290(c), as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.1(b), provides that the amendment by Session Laws 1993, c. 321, s. 290(a) expires June 30, 1995.

Session Laws 1993, c. 321, s. 322 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.1(b), provided that s. 27.1(a), which amended this section, expires June 30, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 321, s. 290(a), effective July 1, 1993, substituted "three million seven hundred thirty-one thousand one hundred sixteen dollars ($3,731,116)" for "two million eight hundred thirty-four thousand six hundred seventy-five dollars ($2,834,675)" and inserted "plus the cost of any legislative salary increase for employees of the Wildlife Resources Commission" following "year" at the end of the sentence. For expiration of this amendment, see the Editor's note.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 27.1, effective July 1, 1994, and expiring June 30, 1995, substituted "four million four hundred eighty-nine thousand four hundred eighty-seven dollars ($4,489,487)" for "three million seven hundred thirty-one thousand one hundred sixteen dollars ($3,731,116)".

§ 105-164.44B. (Effective July 1, 1995) Transfer to Wildlife Resources Fund of taxes on hunting and fishing supplies and equipment.

Each fiscal year, the Secretary of Revenue shall transfer at the end of each quarter from the State sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes to the State Treasurer for the Wildlife Resources Fund, one fourth of the amount transferred the preceding fiscal year plus or minus the percentage of that amount by which the total collection of State sales and use taxes increased or decreased during the preceding fiscal year. (1983 (Reg. Sess., 1984), c. 1116, s. 88; 1987, c. 738, s. 150; 1989, c. 752, s. 159; 1993, c. 321, ss. 290(a), 290(b); 1993 (Reg. Sess., 1994), c. 591, s. 9, c. 769, s. 27.1(a).)

Section Set Out Twice. — The section above is effective July 1, 1995. For the section as in effect until June 30, 1995, see the preceding section, also numbered § 105-164.44B.

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 591, s. 9, effective July 1, 1994, amended Session Laws 1993, c. 321, s. 290(d) to make this section effective July 1, 1995, rather than July 1, 1994.

Effect of Amendments. — Session Laws 1993 c. 321, s. 290(b), effective July 1, 1995, in this section as amended by c. 321, s. 290(a), substituted "the amount transferred the preceding fiscal year" for "three million seven hundred thirty-one thousand one hundred sixteen dollars ($3,731,116)" and deleted "plus the cost of any legislative salary increase for employees of the Wildlife Resources Commission" following "year" at the end of the sentence.

ARTICLE 5A.

North Carolina Highway Use Tax.

§ 105-187.3. (See note) Rate of tax.

(a) Amount. — The rate of the use tax imposed by this Article is three percent (3%) of the retail value of a motor vehicle for which a certificate of title is issued. The tax is payable as provided in G.S. 105-187.4. The tax may not be less than forty dollars ($40.00) for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for the vehicle is exempt from tax under G.S. 105-187.6(a). The tax may not be more than one thousand dollars ($1,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The tax may not be more than one thousand five hundred dollars ($1,500) for each certificate of title issued for any other motor vehicle.

(b) Retail Value. — The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a retailer is the sales price of the motor vehicle, including all accessories attached to the vehicle when it is delivered to the purchaser, less the amount of any allowance given by the retailer for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a sale of the motor vehicle by a seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade as a partial payment for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of a vehicle is presumed to be the value of the vehicle set in a schedule of values adopted by the Commissioner.

(c) Schedules. — In adopting a schedule of values for motor vehicles, the Commissioner shall adopt a schedule whose values do not exceed the wholesale values of motor vehicles as published in a recognized automotive reference manual. (1989, c. 692, ss. 4.1, 4.2; c. 770, s. 74.13; 1993, c. 467, s. 3.)

Editor's Note. —

Session Laws 1993, c. 467, s. 6 provides in part: "A person who paid highway use tax on a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01, at the maximum rate of one thousand five hundred dollars ($1,500) instead of the maximum rate of one thousand dollars ($1,000) set by Section 3 of this act may apply to the Division of Motor Vehicles of the Department of Transportation for a refund of the difference between the amount of tax paid at the higher maximum rate and the amount that would have been paid had Section 3 of this act been in effect when the title to the vehicle was issued. To obtain a refund, a person must submit an application to the Division of Motor Vehicles by January 1, 1994, and provide any information required by the Division to verify the accuracy of the application."

Effect of Amendments. —

The 1993 amendment, effective August 1, 1993, in subsection (a) added the next-to-last sentence, and in the last sentence substituted "certificate of title issued for any other motor vehicle" for "motor vehicle for which a certificate of title is issued".

§ 105-187.6. Exemptions from highway use tax.

(a) Full Exemptions. — The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.

(3) To the same owner to reflect a change or correction in the owner's name.

(4) By will or intestacy.

(5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.

(6) By a distribution of marital property as a result of a divorce.

(7) To a handicapped person from the Department of Human Resources after the vehicle has been equipped by the Department for use by the handicapped.

(8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:

a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.

b. By a local board of education.

(b) Partial Exemptions. — Only the minimum tax imposed by this Article applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To a secured party who has a perfected security interest in the motor vehicle.

(2) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-11-06.

(c) Out-of-state Vehicles. — A maximum tax of one hundred fifty dollars ($150.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days. (1989, c. 692, s. 4.1; c. 770, ss. 74.9, 74.10; 1991, c. 193, s. 4; c. 689, s. 323; 1993, c. 467, s. 1.)

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, substituted "gift between a husband and wife, a parent and child, or a stepparent and a stepchild" for "conveyance between a husband and wife or a parent and child" in subdivision (a)(5); and added subdivisions (a)(7) and (a)(8).

§ 105-187.9. Disposition of tax proceeds.

Taxes collected under this Article at the rate of eight percent (8%) shall be credited to the General Fund. Taxes collected under this Article at the rate of three percent (3%) shall be credited to the North Carolina Highway Trust Fund. In each fiscal year the State Treasurer shall transfer the sum of one hundred seventy million dollars ($170,000,000) of the taxes deposited in the Trust Fund to the General Fund. The transfer of funds authorized by this section may be made by transferring one-fourth of the amount at the end of each quarter in the fiscal year or by transferring the full amount annually on July 1 of each fiscal year, subject to the availability of revenue. (1989, c. 692, s. 4.1; c. 799, s. 33; 1993, c. 321, s. 164(a).)

Editor's Note. — Session Laws 1993 c. 321, s. 164(b) provides: "The interest earned on the one hundred seventy million dollars ($170,000,000) to be transferred pursuant to subsection (a) of this section shall be deposited in the General Fund."

Session Laws 1993, c. 321, s. 321 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, deleted the end of the second sentence which read "by transferring one-fourth of this amount at the end of each quarter in the fiscal year" and added the last sentence.

ARTICLE 5B.

Scrap Tire Disposal Tax.

§ 105-187.16. (Effective until June 30, 1997) Tax imposed.

(a) Levy. — A privilege tax is imposed on a tire retailer at a percentage rate of the sales price of each new tire sold at retail by the retailer. A privilege tax is imposed on a tire retailer and on a tire wholesale merchant at a percentage rate of the sales price of each new tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer for placement on a vehicle offered for sale, lease, or rental by the retailer or wholesale merchant. An excise tax is imposed on a new tire purchased for storage, use, or consumption in this State or for placement in this State on a vehicle offered for sale, lease, or rental. This excise tax is a percentage rate of the cost price of the tire. These taxes are in addition to all other taxes.

(b) Rate. — The percentage rate of the taxes imposed by subsection (a) of this section is set by the following table; the rate is based on the bead diameter of the new tire sold or purchased:

Bead Diameter of Tire	Percentage Rate
Less than 20 inches	2%
At least 20 inches	1%.

(1991, c. 221, s. 1; 1993, c. 548, s. 1.)

For this section as in effect July 1, 1997, see the main volume.

Editor's Note. — Section 9 of Session Laws 1993, c. 548 provides that the amendment by c. 548, s. 1 expires June 30, 1997.

Session Laws 1993, c. 548, s. 9, effective October 1, 1993, provides: "The expiration of the additional tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arise during the time the additional tax is in effect."

Session Laws 1993, c. 364, which amended this section, in s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, added the subsection (a) designation and subsection catchline; in the first, second and fourth sentences substituted "a percentage rate" for "the rate of one percent (1%)"; and added subsection (b). See Editor's note for expiration date.

§ 105-187.18. Exemptions.

Editor's Note. — Session Laws 1993, c. 364, s. 2, effective July 16, 1993, rewrote S.L. 1991, c. 867, s. 2 to make the amendment by c. 867, s. 1 to G.S. 105-187.18 effective upon ratification (July 15, 1992) and to make it applicable retroactively to tires sold on or after July 1, 1991.

Session Laws 1993, c. 364, s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

§ 105-187.19. (Effective until June 30, 1997) Use of tax proceeds.

(a) The Secretary shall distribute the taxes collected under this Article, less the allowance to the Department of Revenue for administrative expenses, in accordance with this section. The Secretary may retain the cost of collection by the Department, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

(b) Each quarter, the Secretary shall credit five percent (5%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty-seven percent (27%) of the net tax proceeds to the Scrap Tire Disposal Account. The Secretary shall distribute the remaining sixty-eight percent (68%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer.

(c) A county may use funds distributed to it under this section only as provided in G.S. 130A-309.54. A county that receives funds under this section and that has an agreement with another unit of local government under which the other unit of local government provides for the disposal of solid waste for the county shall transfer the amount received under this section to the other unit of local government. A unit of local government to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1991, c. 221, s. 1; 1993, c. 485, s. 13; c. 548, s. 2.)

Section Set Out Twice. — The section above is effective until June 30, 1997. For the section as amended effective June 30, 1997, see the following section, also numbered § 105-187.19.

Effect of Amendments. — Session Laws 1993, c. 485, s. 13, effective July 23, 1993, substituted "State Planning Officer" for "Office of State Budget and Management" in present subsection (b).

Session Laws 1993, c. 548, s. 2, effective October 1, 1993, added the subsection (a) through (c) designations; in subsection (a), in the first sentence, substituted "allowance to the Department of Revenue for administrative expenses" for "cost of collecting the taxes" and in the second sentence substituted "may" for "shall", inserted "by the Department, not to exceed two hundred twenty-five thousand dollars ($225,000) a year" and deleted "of Revenue" following "Department"; rewrote subsection (b); and in subsection (c) added "A" at the beginning and added the second and third sentences.

§ 105-187.19. (Effective June 30, 1997) Use of tax proceeds.

(a) The Secretary shall distribute the taxes collected under this Article, less the allowance to the Department of Revenue for administrative expenses, in accordance with this section. The Secretary may retain the cost of collection by the Department, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

(b) Each quarter, the Secretary shall credit ten percent (10%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall distribute ninety percent (90%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer.

(c) A county may use funds distributed to it under this section only as provided in G.S. 130A-309.54. A county that receives funds under this section and that has an agreement with another unit of local government under which the other unit of local government provides for the disposal of solid waste for the county shall transfer the amount received under this section to the other unit of local government. A unit of local government to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1991, c. 221, s. 1; 1993, c. 485, s. 13; c. 548, ss. 2, 8.)

Section Set Out Twice. — The section above is effective June 30, 1997. For the section as in effect until June 30, 1997, see the preceding section, also numbered § 105-187.19.

Effect of Amendments. — Session Laws 1993, c. 548, s. 8, effective June 30, 1997, added the subsection (a) through (c) designations; in subsection (a), in the first sentence substituted "allowance to the Department of Revenue for administrative expenses" for "cost of collecting the taxes" and in the second sentence substituted "may" for "shall", inserted "by the Department, not to exceed two hundred twenty-five thousand dollars ($225,000) a year" and deleted "of Revenue" following "Department"; at the end of subsection (b) substituted "State Planning Officer" for "Office of State Budget and Management. A"; and in subsection (c) added "A" at the beginning and added the second and third sentences.

ARTICLE 5C.

White Goods Disposal Tax.

(This Article expires July 1, 1998)

§ 105-187.20. (Effective until July 1, 1998) Definitions.

The definitions in G.S. 105-164.3 apply to this Article, except that the term "sale" does not include lease or rental, and the following definitions apply to this Article:

(1) Chlorofluorocarbon refrigerant. — Defined in G.S. 130A-290(a).

(2) White goods. — Defined in G.S. 130A-290(a). (1993, c. 471, s. 3.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this Article effective January 1, 1994 and provides that it will expire July 1, 1998.

§ 105-187.21. (Effective until July 1, 1998) Tax imposed.

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is five dollars ($5.00) if the new white good does not contain chlorofluorocarbon refrigerants and is ten dollars ($10.00) if the new white good contains chlorofluorocarbon refrigerants. These taxes are in addition to all other taxes. (1993, c. 471, s. 3.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this Article effective January 1, 1994 and provides that it will expire July 1, 1998.

Session Laws 1993, c. 471, which enacted this section, in s. 11 provides: "The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect."

§ 105-187.22. (Effective until July 1, 1998) Administration.

The privilege tax this Article imposes on a white goods retailer is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new white good in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new white good is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same white good. (1993, c. 471, s. 3.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this section effective January 1, 1994 and provides that it will expire July 1, 1998.

§ 105-187.23. (Effective until July 1, 1998) Exemptions and refunds.

(a) Exemptions. — Except for the exemption provided in G.S. 105-164.13(17), the exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article.

(b) Refunds. — The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article. A person who buys at least 50 new white goods of any kind in the same sale or purchase may obtain a refund equal to sixty percent (60%) of the amount of tax imposed by this Article on the white goods when all of the white goods purchased are to be placed in new or remodeled dwelling units that are located in this State and do not contain the kind of white goods purchased. To obtain a refund, a person must file an application for a refund with the Secretary. The application must contain the information required by the Secretary, be signed by the purchaser of the white goods, and be submitted by the date set by the Secretary. (1993, c. 471, s. 3.)

Editor's Note. — Session Laws 1993, c. 471, s. 11 makes this section effective January 1, 1994 and provides that it will expire July 1, 1998.

§ 105-187.24. (Effective until July 1, 1998) Use of tax proceeds.

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars ($225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit five percent (5%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining seventy-five percent (75%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county. (1993, c. 471, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 15.1(a).)

Editor's Note. — Session Laws 1993, c. 471, s. 11, as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(b), makes this section effective January 1, 1994 and provides that it will expire July 1, 1998.

Section 11, as amended, further provides: "The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 15.1(a), effective July 1, 1994, repealed Session Laws 1993, c. 471, s. 10, which would have amended this section effective January 1, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

ARTICLE 6.

Schedule G. Gift Taxes.

§ 105-197.1. Federal corrections.

If the amount of a taxpayer's net gifts is corrected or otherwise determined by the federal government, the taxpayer must, within two years after being notified of the correction or final determination by the federal government, file a gift tax return with the Secretary of Revenue reflecting the corrected or determined net gifts. The Secretary of Revenue shall determine from all available evidence the taxpayer's correct tax liability for the taxable year. As used in this section, the term "all available evidence" means evidence of any kind that becomes available to the Secretary from any source, whether or not the evidence was considered in the federal correction or determination.

The Secretary shall assess and collect any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary shall refund any overpayment of tax as provided in Article 9 of this Chapter. A taxpayer who fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1973, c. 1287, s. 10; 1993 (Reg. Sess., 1994), c. 582, s. 6.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995, substituted the present section catchline for "Corrections and changes" and rewrote the section.

ARTICLE 7.

Schedule H. Intangible Personal Property.

§ 105-198. Intangible personal property.

CASE NOTES

Cited in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

§ 105-203. Shares of stock.

CASE NOTES

Constitutionality. — North Carolina's intangibles tax levied on ownership of corporate stock violates the Commerce Clause of the United States Constitution (U.S. Const., Art. I, § 8) by increasing the tax liability for shares of stock of corporations which have business activities, property locations, and tax liabilities outside of North Carolina, and by lessening the tax liability for shares in corporations whose business and property are largely or completely in North Carolina. The portion of this section which gives a reduction in intangibles tax liability under the taxable percentage provision was therefore stricken. Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494, cert. granted, 335 N.C. 172, 436 S.E.2d 375 (1993).

§ 105-207. Fiduciaries to pay taxes.

CASE NOTES

Stated in Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

§ 105-212. Institutions exempted; conditional and other exemptions.

(a) None of the taxes levied in this Article or schedule shall apply to religious, educational, charitable or benevolent organizations not conducted for profit, nor to trusts established for religious, educational, charitable or benevolent purposes where none of the property or the income from the property owned by such trust may inure to the benefit of any individual or any organization conducted for profit, nor to any funds, evidences of debt, or securities held irrevocably in a charitable remainder trust meeting the requirements of section 664 of the Code or in a pooled income fund meeting the requirements of section 642(c)(5) of the Code, nor to any funds held irrevocably in trust exclusively for the maintenance and care of places of burial; nor to any funds, evidences of debt, or securities held irrevocably in pension, profit-sharing, stock bonus, or annuity trusts, or combinations thereof, established by employers for the purpose of distributing both the principal and income thereof exclusively to eligible employees, or the beneficiaries of such employees, if such trusts qualify for exemption from income tax under the Code; nor to any funds, evidences of debt or securities held irrevocably in a pension, profit-sharing, stock bonus or annuity plan established by an employer for the benefit of his employees or for himself and his employees if such plan qualifies for exemption from income tax under section 401 of the Code; nor to any funds, evidences of debt, or securities held in an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code, if such individual retirement account or individual retirement annuity is exempt from income tax under section 408(e) of the Code.

(b) Insurance companies reporting premiums to the Commissioner of Insurance of this State and paying a tax thereon under the provisions of Article 8B, Schedule I-B shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203, building and loan associations and savings and loan associations paying a tax under the provisions of Article 8D of Chapter 105 of the General Statutes shall not be subject to the provisions of G.S. 105-201, 105-202 and 105-203; State credit unions organized pursuant to the provisions of Subchapter III, Chapter 54, paying the supervisory fees required by law, shall not be subject to any of the taxes levied in this Article or schedule; banks, banking associations and trust companies shall not be subject to the tax levied in this Article or schedule on evidences of debt held by them when said evidences of debt represent investment of funds on deposit with such banks, banking associations and trust companies: Provided, that each such institution must, upon request by the Secretary of Revenue, establish in writing its claim for exemption as herein provided. The exemption in this subsection shall apply only to those institutions, and only to the extent, specifically mentioned, and no other.

(c) The taxes levied in this Article do not apply to an entity that is treated for federal tax purposes as a "regulated investment company" under section 851 of the Code, as a "real estate investment trust" under section 856 of the Code, or as a "real estate mortgage investment conduit" under section 860D of the Code.

(d) The taxes levied in this Article do not apply to evidences of debt or equity securities held by a venture capital firm. For the purpose of this subsection, the term "venture capital firm" means a person, corporation, partnership, limited partnership, or other entity that:

(1) Does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;

(2) Is not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity;

(3) Is organized for the principal purpose of investing in, and does in fact have more than fifty percent (50%) of all its investments in the equity securities or subordinated debt of companies that, at the time of the investment:

  a. Had no more than 100 owners of their securities, excluding officers, directors, partners, and employees;

  b. Were not financial institutions; and,

  c. Did not derive their income or value primarily from real estate; and

(4) Has the remainder of its investments in shares of stock or other investments on which either no tax is imposed or is payable under this Article.

A venture capital firm may rely on the written representations of a company as to the number of owners of its securities. The definitions as found in G.S. 105-163.010 apply to this subsection.

(e) If any intangible personal property held or controlled by a fiduciary domiciled in this State is so held or controlled for the benefit of a nonresident or nonresidents, or for the benefit of any organization exempt under this section for the tax imposed by this Article, such intangible personal property shall be partially or wholly exempt from taxation and under the provisions of this Article in the ratio which the net income distributed or distributable to such nonresident, nonresidents or organization, derived from such intangible personal property during the calendar year for which the taxes levied by this Article are imposed, bears to the entire net income derived from such intangible personal property during such calendar year. "Net income" shall be deemed to have the same meaning that it has in the income tax article. Where the intangible personal property for which this exemption is claimed is held or controlled with other property as a unit, allocation of appropriate deductions from gross income shall be made to that part of the entire gross income which is derived from the intangible personal property by direct method to the extent practicable; and otherwise by such other method as the Secretary of Revenue shall find to be reasonable: Provided, that each fiduciary claiming the exemption provided in this paragraph shall, upon the request of the Secretary of Revenue, establish in writing its claim to such exemption. No provisions of law shall be construed as exempting trust funds or trust property from the taxes levied by this Article except in the specific cases covered by this subsection.

(f) As used in this section, the term "Code" has the same meaning as in G.S. 105-228.90. (1939, c. 158, s. 714; 1943, c. 400, s. 8; 1945, c. 708, s. 8; 1947, c. 501, s. 7; 1951, c. 937, s. 2; 1957, c. 1340, ss. 7, 9; 1967, c. 1110, s. 13; 1971, c. 827; 1973, c. 476, s. 193; c. 1287, s. 11; 1975, c. 559, s. 7; 1979, c. 179, s. 4; c. 801, ss. 86, 87; c. 1009; 1983, c. 713, ss. 67, 80, 82; 1985, c. 656, ss. 7, 35; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 6; 1989, c. 36, s. 6; c. 704; 1989 (Reg. Sess., 1990), c. 814, s. 26; c. 981, s. 7; 1991, c. 689, s. 256; 1991 (Reg. Sess., 1992), c. 922, s. 9; 1993, c. 12, s. 11; c. 494, s. 3.)

Effect of Amendments. —

Session Laws 1993 c. 12, s. 11, effective for taxable years beginning on or after January 1, 1993, substituted "has the same meaning as in G.S. 105-228.90" for "means the Internal Revenue Code as enacted as of January 1, 1992, and includes any provisions enacted as of that date which become effective either before or after that date".

Session Laws 1993, c. 494, s. 3, effective for taxable years beginning on or after January 1, 1993, in subsection (c), in the first sentence substituted "The taxes levied in this Article do not apply to an entity that is treated for federal tax purposes" for "Any corporation or trust doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina qualifies", deleted "or" following "section 851 of the Code", deleted "the provisions of" preceding "section 856 of the Code" and substituted "or as a 'real estate mortgage investment conduit' under section 860D of the Code" for "and which files with the North Carolina Department of Revenue its election to be treated as a 'regulated investment company' or 'real estate investment trust', shall not be subject to any of the taxes levied in this Article or schedule".

§ 105-213. (Effective until July 1, 1995) Appropriation to counties and municipalities; use of appropriation.

(a) There is annually appropriated from the General Fund to counties and municipalities the amount of revenue collected under this Article during the 1989-90 fiscal year, less an amount equal to the costs during the preceding fiscal year of:

(1) Refunds made during the fiscal year of taxes levied under this Article.
(2) The Department of Revenue to collect and administer the taxes levied under this Article.
(3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
(4) The Property Tax Commission.
(5) The Institute of Government in operating a training program in property tax appraisal and assessment.
(6) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

The appropriation shall be allocated among the counties in proportion to the amount of taxes collected under this Article in each county during the preceding fiscal year. The Secretary of Revenue shall keep a separate record by counties of the taxes collected under this Article. The Secretary shall allocate the amount appropriated under this section to the counties according to the county in which the taxes were collected. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary of Revenue shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified. The funds shall be drawn from the Local Government Tax Sharing Reserve.

For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

§ 105-213 is set out twice. See notes.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to allocate the amount appropriated by this section. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount appropriated by this section. The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(b) For purposes of this section, the term "municipality" includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county. (1939, c. 158, s. 715; 1941, c. 50, s. 8; 1947, c. 501, s. 7; 1957, c. 1340, s. 7; 1967, c. 1196, s. 5; 1971, c. 298, s. 3; 1973, c. 476, s. 193; c. 500, s. 3; c. 537, s. 4; c. 1287, s. 11; 1979, 2nd Sess., c. 1137, s. 48; 1981, c. 4, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 69; 1985, c. 656, ss. 34, 43; 1987, c. 804, s. 7; 1989, c. 756, s. 11; 1989 (Reg. Sess., 1990), c. 813, s. 7; 1991, c. 325, s. 7; c. 689, ss. 24, 28(g); 1991 (Reg. Sess., 1992), c. 993, s. 6; c. 1007, s. 7; 1993, c. 485, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 1995. For the section as amended effective July 1, 1995, see the following section, also numbered § 105-213.

Editor's Note. —

Session Laws 1993, c. 485, s. 1, repealed Section 7 of Chapter 1007 of the 1991 Session Laws, which deleted "net" following "based on the" in the last sentence of the second paragraph of subsection (a), as that sentence read prior to amendment by Session Laws 1991 (Reg. Sess., 1992), c. 993, s. 6. The section is set out above as amended by Session Laws 1991 (Reg. Sess., 1992), c. 993, s. 6.

§ 105-213. (Effective July 1, 1995) Appropriation to counties and municipalities; use of appropriation.

(a) Amount to be Distributed. — On or before June 25 of each year, the Secretary shall distribute to counties and municipalities one hundred three percent (103%) of the amount of revenue collected under this Article from the preceding July 1 through the preceding April 30, less all of the following:

(1) An amount equal to the costs during the preceding fiscal year of:
  a. Refunds made during the fiscal year of taxes levied under this Article.
  b. The Department of Revenue to collect and administer the taxes levied under this Article.
  c. The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.

§ 105-213 is set out twice. See notes.

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d. The Property Tax Commission.
e. The Institute of Government in operating a training program in property tax appraisal and assessment.
f. The personnel and operations provided by the Department of State Treasurer for the Local Government Commission.

(2) An amount equal to the excess of the amount of revenue collected under this Article during the 1993-94 fiscal year over the amount of revenue collected under this Article during the 1989-90 fiscal year, as certified by the Secretary.

(b) Allocation of Distribution. — The amount of revenue to be distributed under subsection (a) shall be allocated among the counties in proportion to the net amount of taxes collected under this Article in each county during the preceding fiscal year. The net amount of taxes collected in a county is the amount collected less the amount of refunds made of taxes previously collected. The Secretary shall keep a separate record by counties of the taxes collected under this Article. The Secretary shall allocate the amount of revenue to be distributed under subsection (a) to the counties in accordance with the tax records. The amounts so allocated to each county shall in turn be allocated between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. After making these allocations, the Secretary shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

For the purpose of computing the allocation of the tax under this subsection to any county and the municipalities located in the county for any quarter with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The chair of each board of county commissioners and the mayor of each municipality shall report to the Secretary information requested by the Secretary to enable the Secretary to allocate the amount distributed by this subsection. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in allocating the amount distributed by this subsection.

(c) Use of Revenue. — The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires.

(d) Definition. — For purposes of this section, the term "municipality" includes any urban service district defined by the governing board of a consolidated city-county, and the amounts due thereby shall be distributed to the government of the consolidated city-county. (1939, c. 158, s. 715; 1941, c. 50, s. 8; 1947, c. 501, s. 7; 1957, c. 1340, s. 7; 1967, c. 1196, s. 5; 1971, c. 298, s. 3; 1973, c. 476, s. 193; c. 500, s. 3; c. 537, s. 4; c. 1287, s. 11; 1979, 2nd Sess., c. 1137, s. 48; 1981, c. 4, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 69; 1985, c. 656, ss. 34, 43; 1987, c. 804, s. 7; 1989, c. 756, s. 11; 1989 (Reg. Sess., 1990), c. 813, s. 7; 1991, c. 325, s. 7; c. 689, ss. 24, 28(g); 1991 (Reg. Sess., 1992), c. 993, s. 6; c. 1007, s. 7; 1993, c. 321, s. 26(a); c. 485, s. 1; 1993 (Reg. Sess., 1994), c. 745, s. 11.)

Section Set Out Twice. — The section above is effective July 1, 1995. For the section as in effect until July 1, 1995, see the preceding section, also numbered § 105-213.

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 321, s. 26(a), effective July 1, 1995, rewrote this section.

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1995, in subsection (b), in the second paragraph, substituted "allocation of the tax under this subsection" for "distribution of the intangibles tax".

§ 105-213.1. Reimbursement to counties and municipalities for partial repeal of tax on intangible personal property.

(a) Reimbursement for Repeal of Tax on Money on Deposit, Money on Hand, and Funds on Deposit with Insurance Companies. — On or before August 30 of each year, the Secretary of Revenue shall allocate for distribution to each county and the municipalities in the county the amount allocated to the county under this subsection in 1990.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.

(a1) Reimbursement for Partial Repeal of Tax on Accounts Receivable. — On or before August 30 of each year, the Secretary of Revenue shall distribute to counties and municipalities an amount equal to forty percent (40%) of the tax collected on accounts receivable during the 1989-90 fiscal year. The Secretary of Revenue shall first allocate the amount to be distributed in this subsection to the counties in the same manner as the amount allocated in G.S. 105-213. The amount allocated to each county shall in turn be divided and distributed between the county and the municipalities located in the county in accordance with the method of allocating intangible tax revenue between a county and the municipalities located in the county provided in G.S. 105-213.

(b) Restrictions on Use. — Amounts distributed to a county or a municipality under this section are subject to the same restrictions as amounts distributed under G.S. 105-213.

(c) Municipality Defined. — As used in this section, the term "municipality" has the same meaning as in G.S. 105-213.

(d) Source. — Funds distributed under this section shall be drawn from collections received under Division II of Article 4 of this Chapter. (1985, c. 656, s. 41; 1989, c. 752, s. 52(c); 1989 (Reg. Sess., 1990), c. 813, s. 8; 1991, c. 689, s. 28(h); 1991 (Reg. Sess., 1992), c. 993, s. 5; 1993, c. 321, s. 26(k).)

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 9, 1993, in subsection (d), substituted "Division II" for "Division I".

CASE NOTES

Cited in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

§ 105-215. Unconstitutionality or invalidity; interpretation; repeal.

CASE NOTES

Quoted in Fulton Corp. v. Justus, 110 N.C. App. 493, 430 S.E.2d 494 (1993).

ARTICLE 8B.

Schedule I-B. Taxes upon Insurance Companies.

§ 105-228.4. Annual registration fees for insurance companies.

(a) As a condition precedent to doing business in this State, an insurance company must apply for and obtain a certificate of registration from the Commissioner of Insurance by March 1 of each year. The certificate shall become effective the following July 1 and shall remain in effect for one year. Except as provided in subsections (b) and (c) of this section, the insurance company shall pay an annual fee for the certificate as follows:

For each domestic farmer's mutual assessment fire insurance company	$ 25.00
For each fraternal order	100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1	500.00

The fees levied in this subsection shall be in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock and/or surplus of an insurance company other than a farmer's mutual assessment company or a fraternal order does not exceed one hundred thousand dollars

($100,000), the fee levied in this section shall be one half the amount above specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees above levied. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1955, c. 179, s. 5; 1989 (Reg. Sess., 1990), c. 1069, s. 4; 1993, c. 495, s. 4; 1993 (Reg. Sess., 1994), c. 745, s. 12.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, in subsection (a) deleted "or association, and branch thereof" following "For each domestic farmer's mutual assessment fire insurance company".

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, rewrote subsection (a).

§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. — Every insurance company and every corporation subject to Article 65 of Chapter 58 of the General Statutes is subject to the tax imposed by this section. A person who is subject to the tax imposed by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. — The tax imposed by this section on an insurance company shall be measured by gross premiums from business done in this State during the preceding calendar year and the tax on a corporation subject to Article 65 of Chapter 58 of the General Statutes shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year. In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

(1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.

(2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, shall mean all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers' Compensation Act, shall mean all premiums written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. — Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

(1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.

(2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.

(3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) Tax Rates. — The tax rate to be applied to gross premiums collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The tax rate to be applied to gross premiums collected on all insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall be deposited in the Rural Volunteer Fire Department Fund established in Articles 84 through 88 of Chapter 58 of the General Statutes. The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by corporations subject to Article 65 of Chapter 58 of the General Statutes shall be one-half of one percent (½ of 1%).

(e) Report and Payment. — Each insurance company and corporation subject to Article 65 of Chapter 58 of the General Statutes doing business in this State shall, within the first 15 days of March, file with the Commissioner of Insurance a full and accurate report of the total gross premiums as defined in this section or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The Commissioner of Insurance shall specify the form of the report and the information to be contained in the report. The report shall be verified by the oath of the company official transmitting it or by some principal officer at the home or head office of the company or association in this country. The taxes imposed by this section shall be remitted to the Commissioner of Insurance with the report. This subsection applies to reports and taxes for firms, corporations, or associations exchanging reciprocal or interinsurance contracts, and those reports and taxes shall be transmitted by their attorneys-in-fact.

(f) Installment Payments Required. — Insurance companies and corporations subject to Article 65 of Chapter 58 of the General Statutes that are subject to the tax imposed by this section and have a premium tax liability of ten thousand dollars ($10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent (33 ⅓%) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Commissioner of Insurance may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

If a company does not meet the installment payment requirement of this subsection, the Commissioner of Insurance shall assess a penalty on underpayments that is equal to the interest rate adopted by the Secretary of Revenue under G.S. 105-241.1(i). Any overpayment shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. — This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, ss. 1-5; 1987, c. 709, s.

2; c. 814, s. 2; 1989 (Reg. Sess., 1990), c. 814, s. 27; 1991, c. 689, s. 297; 1993 (Reg. Sess., 1994), c. 600, s. 4.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable, with respect to annuities and funding agreements, to premiums or other considerations paid for annuities or funding agreements on or after that date as well as to annuity or funding agreement benefits commenced on or after that date pursuant to an annuity or funding agreement purchased before that date, rewrote this section.

ARTICLE 8E.

Excise Stamp Tax on Conveyances.

§ 105-228.30. Imposition of excise stamp tax.

(a) There is levied an excise tax on each deed, instrument, or writing by which any interest in real property is conveyed to another person. The tax shall be at the rate of one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest or property conveyed. The tax shall be paid by the transferor to the register of deeds of the county in which the real estate is situated prior to recording the instrument of conveyance; provided that, if the instrument transfers any parcel of real estate lying in two or more counties, the tax shall be paid to the county wherein the greater part of the real estate with respect to value lies.

(b) The register of deeds of each county shall remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county shall credit one-half of the proceeds to the county's general fund and shall remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue shall credit fifteen percent (15%) to the Natural Heritage Trust Fund established under G.S. 113-77.7 and the remainder to the General Fund. (1967, c. 986, s. 1; 1991, c. 689, s. 338; 1991 (Reg. Sess., 1992), c. 1019, s. 1; 1993 (Reg. Sess., 1994), c. 772, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in subsection (b), in the fourth sentence deleted "Recreation and" preceding "Natural Heritage."

§ 105-228.34. (Effective October 1, 1994 — See editor's note) Willful failure to pay tax.

Any transferor or agent of transferor of real estate willfully and knowingly failing to pay the correct amount of the tax imposed by this Article or any person aiding, abetting, or directing any other person to willfully and knowingly fail to pay the correct amount of such tax shall be guilty of a Class 3 misdemeanor and only fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. When the register of deeds relies on the statement of the party presenting the instrument for registration as to the correct amount of stamps to be affixed, he shall not be subject to prosecution as an aider or abettor under this section. (1967, c. 986, s. 1; 1969, c. 599, s. 2; 1993, c. 539, s. 706; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence inserted "Class 3" preceding "misdemeanor" and inserted "only".

ARTICLE 9.

Schedule J. General Administration; Penalties and Remedies.

§ 105-228.90. Scope and definitions.

(a) Scope. — This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. — The following definitions apply in this Article:

(1) Code. — The Internal Revenue Code as enacted as of January 1, 1994, including any provisions enacted as of that date which become effective either before or after that date.

(2) Reserved.

(3) Electronic Funds Transfer. — A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. — An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. — The Secretary of Revenue.

(7) Tax. — A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional

tax" include penalties and interest as well as the principal amount.

(8) Taxpayer. — A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes. (1991 (Reg. Sess., 1992), c. 930, s. 13; 1993, c. 12, s. 1; c. 354, s. 18; c. 450, s. 1; 1993 (Reg. Sess., 1994), c. 662, s. 1; c. 745, s. 13.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 12, s. 1, effective for taxable years beginning on or after January 1, 1993, substituted "January 1, 1993" for "January 1, 1992" in subdivision (b)(1).

Session Laws 1993, c. 354, s. 18, effective October 1, 1993, in subdivision (b)(5), in the first sentence inserted "an association" following "a firm", deleted "an association" following "a partnership", inserted "a limited liability company" preceding "a corporation", and added the present second sentence.

Session Laws 1993, c. 450, s. 1, effective August 1, 1993, added subdivision (b)(3).

Session Laws 1993 (Reg. Sess., 1994), c. 662, s. 1, effective for taxable years beginning on or after January 1, 1994, in subdivision (b)(1) substituted "1994" for "1993".

Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 13, effective July 15, 1994, in subsection (a) substituted "taxes" for "fees"; and in the first sentence of subdivision (b)(7) substituted "tax" for "fee" following "inspection."

§ 105-230. Charter suspended for failure to report.

If a corporation or a limited liability company fails to file any report or return or to pay any tax or fee required by this Subchapter for 90 days after it is due, the Secretary shall inform the Secretary of State of this failure. The Secretary of State shall suspend the articles of incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The powers, privileges, and franchises conferred upon the corporation or limited liability company by the articles of incorporation, the articles of organization, or the certificate of authority terminate upon suspension. The Secretary of State shall immediately notify by mail every domestic or foreign corporation or limited liability company of the suspension. (1939, c. 158, s. 901; 1957, c. 498; 1967, c. 823, s. 31; 1969, c. 965, s. 2; 1973, c. 476, s. 193; 1987, c. 644, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 19(a); 1993, c. 354, s. 19.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, rewrote this section.

§ 105-231. Penalty for exercising functions after suspension of articles or certificate.

A person who exercises or by any act attempts to exercise any powers, privileges, or franchises under articles of incorporation, articles of organization, or a certificate of authority after it has been suspended under G.S. 105-230 shall pay a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000), to be recovered in an action to be brought by the

Secretary in the Superior Court of Wake County. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect. (1939, c. 158, s. 902; 1973, c. 476, s. 193; 1993, c. 354, s. 20.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, in the catchline to this section deleted "corporate" and substituted "suspension of articles or certificate" for "cancellation or for suspension of charter"; in the first sentence substituted "A person" for "Any person, persons or corporations", substituted "exercises" for "shall exercise", substituted "attempts" for "attempt", substituted "incorporation, articles of organization, or a certificate" for "incorporation or certificate", substituted "it has been suspended under G.S. 105-230" for "the same are suspended, as provided in any section of this Subchapter", deleted "of Revenue" following "Secretary"; in the second sentence deleted "corporate" preceding "act", deleted "such" preceding "suspension", and substituted "is invalid" for "shall be invalid".

§ 105-232. Rights restored; receivership and liquidation.

(a) Any corporation or limited liability company whose articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars ($25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by appropriate entry upon the records of the Office of Secretary of State. The Secretary of State shall immediately notify the corporation or limited liability company of the reinstatement.

(b) When the articles of incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State under G.S. 105-230, and the corporation or limited liability company has ceased to operate as a going concern, if there remains property held in the name of the corporation or limited liability company or undisposed of at the time of the suspension, or there remain future interests that may accrue to the corporation, the limited liability company, or its successors, members, or stockholders, any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all stockholders, members, or their representatives or next of kin shall be made parties. Stockholders or members whose whereabouts are unknown, unknown stockholders or members, unknown heirs and next of kin of deceased stockholders, members, creditors, dealers, and other interested persons may be served by publication. A guardian ad litem may be appointed for any stockholders, members, or their representatives who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the corporation or limited liability company upon such terms and in such manner as the court may order, (ii) apply the proceeds to the payment of any debts of the corporation or limited liability company, and (iii) distribute the remainder among the stockholders, the members, or their representatives in proportion to their interests in the property interests. Shares due to any stockholder or member who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, to be disbursed according to law. In the event the records of the corporation or limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver shall be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the corporation or limited liability company by the payment of its debts and by the transfer to its stockholders, its members, or their representatives their proportionate shares of its assets. (1939, c. 158, s. 903; c. 370, s. 1; 1943, c. 400, s. 9; 1947, c. 501, s. 9; 1951, c. 29; 1969, c. 541, s. 10; 1973, c. 476, s. 193; c. 1065; 1987, c. 644, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 19(b); 1991, c. 645, s. 21; 1993, c. 354, s. 21.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

The 1993 amendment, effective October 1, 1993, in the catchline to this section substituted "Rights" for "Corporate rights", and rewrote the section.

§ 105-233. (Effective October 1, 1994 — See editor's note) Officers, agents, and employees; failing to comply with tax law a misdemeanor.

If any officer, agent, and/or employee of any person, firm, or corporation subject to the provisions of this Subchapter shall willfully fail, refuse, or neglect to make out, file, and/or deliver any reports or blanks, as required by such law, or to answer any question therein propounded, or to knowingly and willfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or upon proper demand to exhibit to such Secretary of Revenue or any of his duly authorized representatives any book, paper, account, record, memorandum of such person, firm, or corporation in his possession and/or under his control, he shall be guilty of a Class 3 misdemeanor and only fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. (1939, c. 158, s. 904; 1973, c. 476, s. 193; 1993, c. 539, s. 707; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only".

§ 105-234. (Effective October 1, 1994 — See editor's note) Aiding and/or abetting officers, agents, or employees in violation of this Subchapter a misdemeanor.

If any person, firm, or corporation shall aid, abet, direct, or cause or procure any of his or its officers, agents, or employees to violate any of the provisions of this Subchapter, he or it shall be guilty of a Class 3 misdemeanor, and only fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. (1939, c. 158, s. 905; 1993, c. 539, s. 708; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only".

§ 105-236. Penalties.

Except as otherwise provided in this Subchapter, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

(1) Penalty for Bad Checks. — When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, an additional tax equal to ten percent (10%) of the check shall be imposed, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary of Revenue finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. The additional tax imposed may not be waived or diminished by the Secretary of Revenue. This subsection applies to all taxes levied or assessed by the State.

(1a) Penalty for Bad Electronic Funds Transfer. — When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This subdivision applies to all taxes levied or assessed by the State. This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(1b) Making Payment in Wrong Form. — For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105- 241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.

(2) Failure to Obtain a License. — For failure to obtain a license before engaging in a business, trade or profession for which a license is required, there shall be assessed an additional tax equal to five percent (5%) of the amount prescribed for such license per month or fraction thereof until paid, which additional tax shall not exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars ($5.00).

(3) Failure to File Return. — In case of failure to file any return required under this Subchapter on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on such return, as a penalty, five percent (5%) of the amount of such tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars ($5.00), whichever is the greater.

(4) Failure to Pay Tax When Due. — In the case of failure to pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars ($5.00).

(5) Negligence. — For negligent failure to comply with any of the provisions of this Subchapter, or rules and regulations issued pursuant thereto, without intent to defraud, there shall be assessed, as a penalty, an additional tax of ten percent (10%) of the deficiency due to such negligence; provided, that in the case of income tax, if gross income is understated by as much as twenty-five percent (25%), or deductions, exclusive of personal exemptions, are overstated by as much as twenty-five percent (25%) of gross income, or if there is a combination of understatement of gross income and overstatement of deductions, exclusive of personal exemptions, equaling twenty-five percent (25%) of gross income, there shall be assessed, as a penalty, an additional tax equal to twenty-five percent (25%) of the total deficiency; provided further, that in the case of sales and use taxes, if it is established that the total tax liability is understated by twenty-five percent (25%) or more as a result of any

a. Omission or understatement of gross sales, gross receipts or gross purchases;
b. Overstatement of exemptions or deductions;
c. Incorrect application of a lesser rate of tax; or
d. Any combination of the foregoing; there shall be assessed as a penalty an additional tax equal to twenty-five percent (25%) of the total deficiency. If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.

(5a) Misuse of Certificate of Resale. — For misuse of a certificate of resale by a purchaser, the Secretary shall assess an additional tax, as a penalty, of two hundred fifty dollars ($250.00).

(6) Fraud. — If there is a deficiency or delinquency in payment of any tax levied by this Subchapter, due to fraud with intent to evade the tax, there shall be assessed, as a penalty, an additional tax equal to fifty percent (50%) of the total deficiency.

(7) **(Effective October 1, 1994 — See editor's note)** Attempt to Evade or Defeat Tax. — Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat any tax imposed by this Subchapter of the General Statutes, or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars ($25,000).

(8) **(Effective October 1, 1994 — See editor's note)** Willful Failure to Collect, Withhold, or Pay Over Tax. — Any person required under this Subchapter to collect, withhold, account for, and pay over any tax imposed by this Subchapter who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9) **(Effective October 1, 1994 — See editor's note)** Willful Failure to File Return, Supply Information, or Pay Tax. — Any person required under this Subchapter to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law, or regulations issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.

(9a) **(Effective October 1, 1994 — See editor's note)** Aid or Assistance. — Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that he knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars ($10,000).

(10) Failure to File Informational Returns. —

a. For failure to file a partnership or a fiduciary informational return when such returns are due to be filed, there shall be assessed as a tax against the delinquent five dollars ($5.00) per month or fraction thereof of such delinquency, such tax, however, in the aggregate not to exceed the sum of twenty-five dollars ($25.00). When assessed against a fiduciary, the tax herein provided shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".

b. For failure to file timely statements of payments to another person or persons with respect to wages, dividends, rents or interest paid to such other person or persons, there shall be assessed as a tax a penalty of one dollar ($1.00) for each statement not filed on time, the aggregate of such penalties for each tax year not to exceed one hundred dollars ($100.00), and in addition thereto, if the Secretary shall request the payor to file such statements and shall set a date on or before such statements shall be filed, and the payor shall fail to file such statements within such time, the amounts claimed on payor's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payor failed to comply with the Secretary's request with respect to such statements.

(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 354, s. 22, effective October 1, 1993, in subdivision (11), deleted the former second paragraph, which read "The term 'person' as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership who as officer, employee, or member is under a duty to perform the act in respect to which the violation occurs."

Session Laws 1993, c. 450, s. 10, effective August 1, 1993, added subdivisions (1a) and (1b).

Session Laws 1993, c. 539, ss. 709, 710, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of subdivisions (8) and (9) inserted "Class 1" preceding "misdemeanor".

Session Laws 1993, c. 539, effective October 1, 1994, and applicable to offenses occurring on or after that date, in s. 1292 substituted "which may include a fine up to twenty-five thousand dollars ($25,000)" for "punishable by imprisonment up to five years, a fine up to twenty-five thousand dollars ($25,000), or both" in subdivision (7), and in s. 1293 substituted "Class I felony which may include a fine up to ten thousand dollars ($10,000)" for "Class J felony punishable by imprisonment up to three years, a fine up to ten thousand dollars ($10,000), or both" in subdivision (9a).

§ 105-237. Waiver of penalties; installment payments.

(a) Waiver. — The Secretary may, upon making a record of the reasons therefor, reduce or waive any penalties provided for in this Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.

(b) Installment Payments. — After a proposed assessment of a tax becomes final, the Secretary may enter into an agreement with the taxpayer for payment of the tax in installments if the Secretary determines that the agreement will facilitate collection of the tax. The agreement may include a waiver of penalties but may not include a waiver of liability for tax or interest due. The Secretary may modify or terminate the agreement if one or more of the following findings is made:

(1) Information provided by the taxpayer in support of the agreement was inaccurate or incomplete.
(2) Collection of tax to which the agreement applies is in jeopardy.
(3) The taxpayer's financial condition has changed.
(4) The taxpayer has failed to pay an installment when due or to pay another tax when due.
(5) The taxpayer has failed to provide information requested by the Secretary.

The Secretary must give a taxpayer who has entered into an installment agreement at least 30 days' written notice before modifying or terminating the agreement on the grounds that the taxpayer's financial condition has changed unless the taxpayer failed to disclose or concealed assets or income when the agreement was made or the taxpayer has acquired assets since the agreement was made that can satisfy all or part of the tax liability. A notice must specify the basis for the Secretary's finding of a change in the taxpayer's financial condition. (1939, c. 158, s. 908; c. 370, s. 1; 1973, c. 476, s. 193; 1993, c. 532, s. 1.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, substituted "Waiver of penalties; installment payments" for "Discretion of Secretary over penalties" in the catchline to this section; added the subsection (a) designation; in subsection (a) added "Waiver" at the beginning, substituted "may" for "of Revenue shall have power", substituted "the reasons" for "his reasons", deleted "to" preceding "reduce or waive"; and added subsection (b).

§ 105-239.1. Transferee liability.

(a) Property transferred for an inadequate consideration to a donee, heir, legatee, devisee, distributee, stockholder of a liquidated corporation, or any other person at a time when the transferor is insolvent or is rendered insolvent by reason of the transfer shall be subject to a lien for any taxes owing by the transferor to the State of North Carolina at the time of the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer. G.S. 105-241 applies to this tax lien. In the event the transferee has disposed of the property so that it cannot be subjected to the State's tax lien, the transferee shall be personally liable for the difference between the fair market value of the property at the time of the transfer and the actual consideration, if any, paid to the transferor by the transferee.

Upon a foreclosure of the State's tax lien upon property in the hands of a transferee, the value of any consideration that the transferee proves has been given to the transferor shall be paid to the transferee out of the proceeds of the foreclosure sale before applying the proceeds toward the satisfaction of the State's tax lien.

In order to proceed against the transferee or property in the transferee's hands, the Secretary shall cause to be docketed in the office of the clerk of the superior court of the county wherein the transferee resides or the property is located, as the case may be, a certificate of tax liability as provided in G.S. 105-242 or a lien certificate which shall set forth the amount of the lien as determined by the Secretary or as finally determined upon appeal and a description of the property subject to the lien. Thereafter, execution may be issued against the transferee as in the case of other money judgments except that no homestead or personal exemption shall be allowable or, upon a lien certificate, an execution may be issued directing the sheriff to seize the property subject to the lien and sell same in the same manner as property is sold under execution. Such procedure and collection shall be subject to the provisions of subsection (c) of this section.

(b) The period of limitations for assessment of any liability against a transferee or enforcing the lien against the transferred property shall expire one year after the expiration of the period of limitations for assessment against the transferor.

(c) The provisions of G.S. 105-241.1, 105-241.2, 105-241.3, 105-241.4, 105-266.1 and 105-267 with respect to assessment procedure, demand for refund, review, and appeal shall apply to the liability of any transferee assessed under this section or of any property subject to the liability imposed by this section and to the assertion of a lien upon property in the hands of the transferee.

(d) In any proceeding before the Tax Review Board or in any court of the State the burden of proof shall be upon the Secretary of Revenue to show that a person is liable as a transferee of property of a taxpayer under this section. (1957, c. 1340, s. 10; 1973, c. 476, s. 193; 1993, c. 450, s. 11.)

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, in subsection (a) substituted "the transfer whether or not the amount of the taxes has been ascertained or assessed at the time of the transfer" for "such transfer whether or not the amount of such taxes shall have been ascertained or assessed at the time of such transfer", deleted "Such lien shall be subject to the provisions of the first proviso contained in G.S. 105-241", inserted "G.S. 105-241 applies to this tax lien", substituted "has disposed of the" for "shall have disposed of such" preceding "property so that it cannot", substituted "the property" for "such property" preceding "at the time of the transfer"; in the second paragraph substituted "that the transferee proves has been" for "which the transferee shall have established as having been", substituted "the proceeds" for "such proceeds"; and in the third paragraph substituted "the transferee's hands" for "his hands".

§ 105-241. Where and how taxes payable; tax period; liens.

(a) Form of Payment. — Taxes are payable in the national currency. The Secretary shall prescribe where taxes are to be paid and whether taxes must be paid in cash, by check, by electronic funds transfer, or by another method.

(b) Electronic Funds Transfer. — The Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. The twenty thousand dollar ($20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended.

(c) Tax Period. — Except as otherwise provided in this Chapter, taxes are levied for the fiscal year of the state in which they became due.

(d) Lien. — This subsection applies except when another Article of this Chapter contains contrary provisions with respect to a lien for a tax levied in that Article. The lien of a tax attaches to all real and personal property of a taxpayer on the date a tax owed by the taxpayer becomes due. The lien continues until the tax and any interest, penalty, and costs associated with the tax are paid. A tax lien is not extinguished by the sale of the taxpayer's property. A tax lien, however, is not enforceable against a bona fide purchaser for value or the holder of a duly recorded lien unless:

(1) In the case of real property, a certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.

(2) In the case of personal property, there has already been a levy on the property under an execution or a tax warrant.

The priority of these claims and liens is determined by the date and time of recording, docketing, levy, or bona fide purchase.

If a taxpayer executes an assignment for the benefit of creditors or if insolvency proceedings are instituted against a taxpayer who owes a tax, the tax lien attaches to all real and personal property of the taxpayer as of the date and time the taxpayer executes the assignment for the benefit of creditors or the date and time the insolvency proceedings are instituted. In these cases, the tax lien is subject only to a prior recorded specific lien and the reasonable costs of administering the assignment or the insolvency proceedings. (1939, c. 158, s. 912; 1949, c. 392, s. 6; 1957, c. 1340, s. 5; 1993, c. 450, s. 2.)

Editor's Note. — Session Laws 1993, c. 450, s. 15 provides in part: "Notwithstanding the provisions of G.S. 105-241(a) as amended by this act, the Secretary of Revenue may not begin to require payment by electronic funds transfer of motor fuels taxes levied under Subchapter V of Chapter 105 of the General Statutes or of the inspection fee levied under Article 3 of Chapter 119 of the General Statutes until July 1, 1995."

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, in the catchline to this section substituted "Where and how taxes payable; tax period; liens" for "Taxes payable in national currency; for what period, and when a lien; priorities"; and rewrote the section.

CASE NOTES

Local ad valorem tax liens do not fall within the scope of "other recorded specific liens". County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 105-241.1. Additional taxes; assessment procedure.

(a) Proposed Assessment. — If the Secretary discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the kind and amount of tax due and of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the proposed assessment and identify the amounts of any tax, interest, additions to tax, and penalties included in the proposed assessment. The notice must also advise the taxpayer that the proposed assessment will become final unless the taxpayer requests a hearing within the time set in subsection (c) of this section.

The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.

(b) Delivery of Notice. — The Secretary shall deliver the notice of a proposed assessment to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations in subsection (c) apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

(c) Hearing. — A taxpayer who objects to a proposed assessment of tax is entitled to a hearing before the Secretary as provided in this subsection. To obtain a hearing, the taxpayer must file a written request either for a hearing or for a written statement of the information and evidence upon which the proposed assessment is based. If the notice of a proposed assessment was mailed, the taxpayer's request must be filed within 30 days after the date the notice was mailed; if the notice of a proposed assessment was delivered in person, the taxpayer's request must be filed within 30 days after the date the notice was delivered.

When a taxpayer files a timely request for a written statement of the information and evidence upon which a proposed assessment is based, the Secretary must give the written statement to the taxpayer within 45 days after the taxpayer filed the request. A taxpayer who files a timely request for a written statement concerning a proposed assessment and who desires to have a hearing on the proposed assessment must file a written request for a hearing within 30 days after the written statement was mailed.

When a taxpayer files a timely request for a hearing, the Secretary must set the time and place at which the hearing will be conducted and must notify the taxpayer of the designated time and place within 60 days after the taxpayer filed the request for a hearing and at least 10 days before the date set for the hearing. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

The taxpayer may present any objections to the proposed assessment at the hearing. The rules of evidence do not apply at the hearing.

Within 90 days after the Secretary conducts a hearing on a proposed assessment, the Secretary must make a decision on the proposed assessment and notify the taxpayer of the decision. The decision must assess the taxpayer for the amount of any tax the Secretary determined to be due.

(d) Assessment. — If a taxpayer does not apply for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final without further notice. If a taxpayer applies for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final when the taxpayer is notified of the decision made after the hearing. An assessment that is final is immediately due and collectible. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax assessed under this section.

Except in the case of a jeopardy assessment, the Secretary may not assess a taxpayer for a tax until the notice required by subsection (a) has been given and one of the following has occurred:

(1) The time for applying for a hearing has expired.

(2) The Secretary and the taxpayer have agreed upon a settlement.

(3) The taxpayer has filed a timely application for a hearing and the Secretary, after conducting the hearing, has given the taxpayer written notice of the decision.

(d1) Notice of Assessment. — The Secretary must notify the taxpayer when a proposed assessment becomes final and is therefore collectible. The notice must identify the amounts of any tax, interest, additions to tax, and penalties included in the assessment. The notice must include or be accompanied by a brief statement in simple and nontechnical terms of all of the following:

(1) The Department's authority to, and procedure for, levy on and sale of the taxpayer's property.

(2) The taxpayer's available administrative appeals regarding the levy and sale of property, including the procedures for appeal.

(3) Other options available to the taxpayer that could prevent levy on the property.

(4) Procedures to redeem property and obtain release of a lien on property.

(e) **(See editor's note)** Statute of Limitations. — The Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax. If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014, the Secretary must assess any tax or additional tax due as a result of the forfeiture within three years after the date of the forfeiture. In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later. If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver.

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(f) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(g) Jeopardy Assessments. — Notwithstanding any other provision of this section, the Secretary may at any time within the applicable period of limitations immediately assess any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State. For a jeopardy assessment, the Secretary may give the taxpayer the notice of proposed assessment required by subsection (a) any time within 30 days after the jeopardy assessment is made. The taxpayer may request a hearing on the jeopardy assessment by following the procedure described in the notice.

Within five days after a jeopardy assessment is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the assessment. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether making the jeopardy assessment was reasonable under all the circumstances and whether the amount assessed is reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.

(h) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(i) Interest. — All assessments of tax, exclusive of penalties assessed on the tax, shall bear interest at the rate established pursuant to this subsection from the time the tax was due until paid. On or before June 1 and December 1 of each year, the Secretary shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(i1) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(j) Construction. — This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and collection of taxes. (1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1969, c. 1132, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1977, c. 657, s. 6; c. 1114, ss. 1, 11; 1981 (Reg. Sess., 1982), c. 1211, s. 2; c. 1223, s. 4; 1987, c. 827, s. 21; 1989, c. 530; 1993, c. 443, s. 6; c. 532, s. 2; 1993 (Reg. Sess., 1994), c. 582, s. 5; c. 745, s. 14.)

Editor's Note. —

This section was amended by Session Laws 1993 (Reg. Sess., 1994), c. 582, s. 5, in the coded bill drafting format provided by § 120-20.1. The act did not incorporate the changes in subsection (e) made by Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 14. Subsection (e) is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1993, c. 532, s. 14 provides: "This act becomes effective January 1, 1994. The time limits on administrative hearings apply to requests for a hearing and petitions for administrative review filed under G.S. 105-241.1 or G.S. 105-242.2, as amended by this act, on or after that date."

The reference in Session Laws 1993, c. 532, s. 14 to G.S. 105-242.2 should probably be a reference to G.S. 105-241.2.

Effect of Amendments. — Session Laws 1993, c. 443, s. 6, effective July 22, 1993, added the second sentence of subsection (e).

Session Laws 1993, c. 532, s. 2, effective January 1, 1994, rewrote subsections (a), (c), (d), and (g); added subsection (d1); deleted former subsection (f), which dealt with notice; deleted former subsection (h), which dealt with the rules of evidence in a hearing; and deleted former subsection (i1), defining "tax" and "additional tax".

Session Laws 1993 (Reg. Sess., 1994), c. 582, s. 5, effective January 1, 1995, and applicable to assessments of taxes for which the statute of limitations had not expired on or before January 1, 1995, rewrote subsections (b) and (e); in subsection (i) added the subsection catchline, in the first sentence substituted "assessments of tax" for "assessments of taxes or additional taxes," substituted "on the tax" for "thereon," inserted "at the rate established pursuant to this subsection," and substituted "tax was due" for "taxes or additional taxes were due," in the second sentence deleted "of Revenue" following "Secretary" and deleted "Internal Revenue" preceding "Code," deleted the fifth sentence which read "For refunds and assesments made between July 1, 1982, and December 31, 1982, the rate shall be twelve percent (12%) per year," and deleted the former second paragraph regarding interest; and in subsection (j) added the subsection catchline and deleted from the end "and shall not be construed as repealing any other provision of the General Statutes."

Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 14, effective July 15, 1994, in subsection (e), in the first paragraph, added the subsection catchline, in the first sentence substituted "If" for "Where" and deleted "of Revenue" following "Secretary," and in the second paragraph, in the first sentence substituted "The" for "Provided, the" and deleted "and if such waiver is accepted by the Secretary he" from the end, in the second sentence added "If the Secretary accepts the waiver, the Secretary" at the beginning and deleted the last sentence, which read "This proviso shall apply to assessments made or undertaken under any provision of all schedules of the Revenue Act, and to assessments under Subchapter V of Chapter 105 and Chapter 18 of the General Statutes"; and made stylistic changes.

CASE NOTES

Statute of Limitations Extended for Failure to Comply with § 105-159. — Failure to notify the Secretary of Revenue of the assessment of additional taxes by the Commissioner of Internal Revenue pursuant to § 105-159 extends the statute of limitations. McFarland v. Justus, 113 N.C. App. 107, 437 S.E.2d 668 (1993).

§ 105-241.2. Administrative review.

(a) Petition for Administrative Review. — Without having to pay the tax or additional tax assessed by the Secretary under this Chapter, any taxpayer may obtain from the Tax Review Board an administrative review with respect to the taxpayer's liability for the tax or additional tax assessed by the Secretary. Such a review may be obtained only if the taxpayer has obtained a hearing before the Secretary and the Secretary has rendered a final decision with respect to the taxpayer's liability. If a taxpayer has made a timely written demand for refund of an alleged overpayment and the Secretary has issued a decision denying part or all of the claimed refund, the taxpayer may obtain from the Tax Review Board an administrative review of the Secretary's decision. To obtain administrative review the taxpayer must take the following actions:

(1) Within 30 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, notice of intent to file a petition for review.

(2) Within 60 days after the Secretary's final decision is issued, file with the Tax Review Board, with a copy to the Secretary, a petition requesting administrative review and stat-

ing in concise terms the grounds upon which review is sought.

(b) Secretary to Provide Records. — Upon receipt by the Secretary of the taxpayer's petition, the Secretary shall transmit to the Tax Review Board all of the records, data, evidence, and other materials in the Secretary's possession pertaining to the matters the Tax Review Board is being requested by the taxpayer to review. The Secretary shall also transmit to the Board a copy of the decision of the Secretary on the matters.

(b1) Hearing. — Within 60 days after a timely petition for administrative review has been filed and at least 10 days before the date set for the hearing, the Tax Review Board shall notify the taxpayer and the Secretary in writing of the time and place at which the hearing will be conducted. The hearing shall be held in Raleigh and the date set for the hearing shall be within 90 days after the timely petition for administrative review was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary. Officers and employees of the Revenue Department, when so requested by the Board, shall attend hearings on petitions for review and shall furnish the Board with all information they have respecting the asserted liability. The Tax Review Board may establish the procedure to be followed in hearings before it and may establish a schedule of costs of the proceedings. At least two members of the Board shall sit at the hearing and all members shall consider and decide the matters on review.

(b2) Decision of Tax Review Board. — Within 90 days after conducting a hearing under this section, the Board shall confirm, modify, reverse, reduce, or increase the assessment or decision of the Secretary, furnish a written copy of its order to the Secretary, and serve a written copy of its order upon the taxpayer by personal service or by registered mail (return receipt requested). If the decision of the Tax Review Board does not result in a reduction of the tax liability asserted by the Secretary to be due, or if the Tax Review Board dismisses the petition under subsection (c) of this section, the costs of the proceeding shall be added to and shall become a part of the tax liability to be collected by the Secretary. If the decision of the Tax Review Board should result in a reduction of the tax liability asserted by the Secretary to be due or in a refund to the taxpayer, no costs shall be taxed against the taxpayer. Any overpayment of tax determined by the decision of the Tax Review Board, together with interest thereon at the rate and for the period provided under G.S. 105-266, shall be refunded by the State.

(c) Frivolous Petitions. — Upon receipt of a petition requesting administrative review as provided in the preceding subsection, the Tax Review Board shall examine the petition and the records and other data transmitted by the Secretary pertaining to the matter for which review is sought, and if it should appear from such records and data that the petition is frivolous or filed for purpose of delay, the Tax Review Board shall dismiss the petition for review and, in addition, is authorized, in its discretion, to impose a penalty not to exceed one hundred dollars ($100.00), which penalty shall be in addition to the tax, penalties, interests, and costs, and shall be collected in the same manner as the principal tax liability.

(d) Repealed by Session Laws 1993, c. 532, s. 3, effective January 1, 1994.

(e) Jeopardy Levies. — At any time the Secretary may, if in the Secretary's opinion, such action is necessary for the protection of the interest of the State, proceed at once to levy the assessment for the amount of the tax against the property of the taxpayer seeking the administrative review. In levying the assessment the Secretary shall make a certificate verifying the essential parts relating to the tax, including the amount thereof asserted to be due, the date when same is asserted to have become due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax. The Secretary shall transmit this certificate to the clerk of the superior court of any county in which the taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the certificate and to index it on the cross index of judgments. When so docketed and indexed, the certificate of tax liability shall constitute a lien upon the property of the taxpayer to the same extent as that provided for by G.S. 105-241. No execution shall issue on the certificate before final determination of the administrative review by the Tax Review Board; provided, however, if the Secretary determines that the collection of the tax would be jeopardized by delay, the Secretary may cause execution to be issued, as provided in this Chapter, immediately against the personal property of the taxpayer unless the taxpayer files with the Secretary a bond in the amount of the asserted liability for tax, penalty and interest. If upon final administrative determination the tax asserted or any part thereof is sustained, execution may issue on the certificate at the request of the Secretary and the sheriff shall proceed to advertise and sell the property of the taxpayer.

Within five days after a jeopardy levy is made under this subsection that is not the result of a criminal investigation or of a liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the levy. Within 30 days after receipt of this statement or, if no statement was received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary shall determine whether the levy was reasonable under the circumstances. The Secretary shall give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.

(f) Repealed by Session Laws 1993, c. 532, s. 3, effective January 1, 1994. (1955, c. 1350, s. 5; 1957, c. 1340, s. 10; 1973, c. 476, s. 193; 1993, c. 532, s. 3; 1993 (Reg. Sess., 1994), c. 745, ss. 15, 16.)

Editor's Note. — Session Laws 1993, c. 532, s. 14 provides: "This act becomes effective January 1, 1994. The time limits on administrative hearings apply to requests for a hearing and petitions for administrative review filed under G.S. 105-241.1 or G.S. 105-242.2, as amended by this act, on or after that date."

The reference in Session Laws 1993, c. 532, s. 14 to G.S. 105-242.2 should probably be a reference to G.S. 105-241.2.

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, rewrote this section.

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (b), in the second sentence substituted "Secretary" for "Board"; and in subsection (e), in the catchline substituted "Levies" for "Assessments".

§ 105-241.5. Appeal of certain jeopardy actions.

Within 90 days after the earlier of the date a taxpayer received or should have received a determination of the Secretary concerning a jeopardy assessment under G.S. 105-241.1(g) or a jeopardy levy under G.S. 105-241.2(e), the taxpayer may bring a civil action, in the Superior Court of Wake County or of the county in North Carolina in which the taxpayer resides, seeking review of the jeopardy action. Within 20 days after the action is filed, the court shall determine:

(1) In the case of a jeopardy assessment, whether the assessment is reasonable under the circumstances and whether the amount assessed is appropriate under the circumstances.

(2) In the case of a jeopardy levy, whether the levy is reasonable under the circumstances.

If the court determines that an action of the Secretary is unreasonable or inappropriate, the court may order the Secretary to take any action the court finds appropriate. If the taxpayer shows reasonable grounds why the 20-day limit on the court should be extended, the court may grant an extension of not more than 40 additional days. (1993, c. 532, s. 4.)

Editor's Note. — Session Laws 1993, c. 532, s. 14 makes this section effective January 1, 1994.

§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.

(a) Warrants for Collection of Taxes. — If any tax levied by the State and payable to the Secretary has not been paid within 30 days after the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary may take either of the following actions to collect the tax:

(1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

(2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee

to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of personal property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in Wake County or in the county in which it was seized, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes.

(b) Garnishment and Attachment. — Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, including property held in the Escheat Fund, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect such attachment or garnishment the Secretary of Revenue shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Secretary of Revenue or by any officer having authority to serve summonses or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall:

(1) Show the name of the taxpayer, and if known his Social Security number or federal tax identification number and his address;

(2) Show the nature and amount of the tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and

(3) Be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of said notice, answer the same by sending to the Secretary of Revenue by registered or certified mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Secretary with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Secretary upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Secretary by registered or certified mail; if the Secretary admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Secretary as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Secretary shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Secretary of Revenue by default or after hearing, the garnishee shall become liable for the taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month as provided in subdivision (e)(4) of this section. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Secretary of Revenue or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said taxes, interest, and penalties shall be those provided in this Subchapter, as now or hereafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by law in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Secretary at any time within 12 months after said intangible is paid to him and if the Secretary finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-266.1, and if such payment is denied, said party may appeal from the determination of the Secretary under the provisions of G.S. 105-241.4; provided, that in taking an appeal to the superior court, said party may appeal either to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Secretary is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied.

This subsection shall be applicable with respect to the wages, salary or other compensation of officials and employees of this State and its agencies and instrumentalities, officials and employees of political subdivisions of this State and their agencies and instrumentalities, and also officials and employees of the United States and its agencies and instrumentalities insofar as the same is permitted by the Constitution and laws of the United States. In the case of State or federal employees, the notice shall be served upon such employee and upon the head or chief fiscal officer of the department, agency, instrumentality or institution by which the taxpayer is employed. In case the taxpayer is an employee of a political subdivision of the State, the notice shall be served upon such employee and upon the chief fiscal officer, or any officer or person charged with making up the payrolls, or disbursing funds, of the political subdivision by which the taxpayer is employed. Such head or chief officer or fiscal officer or other person as specified above shall thereafter, subject to the limitations herein provided, make deductions from the salary or wages due or to become due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs allowed by law are fully paid. Such deductions and remittances shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(c) Certificate or Judgment for Taxes. — In addition to the remedy herein provided, the Secretary of Revenue is authorized and empowered to make a certificate setting forth the essential particulars relating to the said tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court (said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and on personalty only from the date of the levy on such personalty and upon the execution thereon no homestead or personal property exemption shall be allowed except as provided in subdivision (e)(1) of this section).

Except as provided in G.S. 105-241.2(e) for jeopardy levies, no sale of real or personal property shall be made under any execution issued on a certificate docketed pursuant to the provisions of this subsection before the administrative action of the Secretary of Revenue or the Tax Review Board is completed when a hearing has been requested of the Secretary or a petition for review has been filed with the Tax Review Board, nor shall such sale be made before the assessment on which the certificate is based becomes final when there is no request for a hearing before the Secretary or petition for review by the Tax Review Board. Neither the title to real estate nor to personal property sold under execution issued upon a certificate docketed under this subsection shall be drawn in question upon the ground that the administrative action contemplated by this paragraph was not completed prior to the sale of such property under execution. Nothing in this paragraph shall prevent the sheriff to whom an execution is issued from levying upon either real or personal property pending an administrative determination of tax liability and, in the case of personal property, the sheriff may hold such property in his custody or may restore the execution defendant to the possession thereof upon the giving of a sufficient forthcoming bond. Upon a final administrative determination of the tax liability being had, if the assessment or any part thereof is sustained, the sheriff shall, upon request of the Secretary of Revenue, proceed to advertise and sell the property under the original execution notwithstanding the original return date of the execution may have expired.

The owner of tangible property seized under this section may request the Secretary to authorize the sale of the property under execution within 60 or more days after the request is made. The Secretary shall authorize the sale unless the Secretary finds that selling the property would not be in the best interests of the State. When property is sold at the request of the owner, the Department shall receive from the sale of the property the administrative expenses it incurred in having the property sold.

A certificate or judgment in favor of the State or the Secretary of Revenue for taxes payable to the Department of Revenue, whether docketed before or after the effective date of this paragraph, shall be valid and enforceable for a period of 10 years from the date of docketing. When any such certificate or judgment, whether docketed before or after the effective date of this paragraph, remains unsatisfied for 10 years from the date of its docketing, the same shall be unenforceable and the tax represented thereby shall abate. Upon the expiration of said 10-year period, the Secretary of Revenue or his duly authorized deputy shall cancel of record said certificate or judgment. Any such certificate or judgment now on record which has been docketed for more than 10 years shall, upon the request of any interested party, be canceled of record by the Secretary of Revenue or his duly authorized deputy; provided, in the event of the death of the judgment debtor or his absence from the State before the expiration of the 10-year period herein provided, the running of said 10-year period shall be stopped for the period of his absence from the State or during the pendency of the settlement of the estate and for one year thereafter, and the time elapsed during the pendency of any action or actions to set aside the judgment debtor's conveyance or conveyances as fraudulent, or the time during the pendency of any insolvency proceeding, or the time during the existence of any statutory or judicial bar to the enforcement of the judgment shall not be counted in computing the running of said 10-year period. And, provided further, that any execution sale which has been instituted upon any such judgment before the expiration of the 10-year period may be completed after the expiration of the 10-year period, notwithstanding the fact that resales may be required because of the posting of increased bids. Provided further, that, notwithstanding the expiration of the 10-year period provided and notwithstanding the fact that no proceedings to collect the judgment by execution or otherwise has been commenced within the 10-year period, the Secretary of Revenue may accept any payments tendered upon said judgments after the expiration of said 10-year period.

(c1) Release of Lien. — The Secretary shall release the State tax lien on a taxpayer's property if the liability for which the lien attached has been satisfied. The Secretary may release the State tax lien on all or part of a taxpayer's property if one or more of the following findings is made:

(1) The liability for which the lien attached has become unenforceable due to lapse of time.

(2) The lien is creating an economic hardship due to the financial condition of the taxpayer.

(3) The fair market value of the property exceeds the tax liability and release of the lien on part of the property would not hinder collection of the liability.

(4) Release of the lien will probably facilitate, expedite, or enhance the State's chances for ultimately collecting a tax due the State.

If the Secretary of Revenue shall find that it will be for the best interest of the State in that it will probably facilitate, expedite or enhance the State's chances for ultimately collecting a tax due the State, he may authorize a deputy or agent to release the lien of a State tax judgment or certificate of tax liability upon a specified parcel or parcels of real estate by noting such release upon the judgment docket where such certificate of tax liability is recorded. Such release shall be signed by the deputy or agent and witnessed by the clerk of court or his deputy or assistant and shall be in substantially the following form: "The lien of this judgment upon (insert here a short description of the property to be released sufficient to identify it, such as reference to a particular tract described in a recorded instrument) is hereby released, but this judgment shall continue in full force and effect as to other real property to which it has heretofore attached or may hereafter attach. This .... day of ...., 19.....

....
Revenue Officer, N.C. Department of Revenue
WITNESS:
....42 C.S.C."

The release shall be noted on the judgment docket only upon conditions prescribed by the Secretary and shall have effect only as to the real estate described therein and shall not affect any other rights of the State under said judgment.

(d) Remedies Cumulative. — The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said taxes.

(e) Exempt Property. — Only the following property is exempt from levy, attachment, and garnishment under this Article:

(1) The taxpayer's principal residence, unless the Secretary approves of the levy in writing or the Secretary finds that collection of the tax is in jeopardy.
(2) Tangible personal property that is exempt from federal levy as provided in section 6334 of the Code.
(3) Intangible personal property that is exempt from federal levy under section 6334 of the Code.
(4) Ninety percent (90%) of the taxpayer's salary or wages per month.

(f) Uneconomical Levy. — The Secretary shall not levy against any property if the Secretary estimates before levy that the expenses the Department would incur in levying against the property would exceed the fair market value of the property.

(g) Erroneous Lien. — A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall issue a certificate of release of the lien as quickly as possible. (1939, c. 158, s. 913; 1941, c. 50, s. 10; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1285; c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 368; 1963, c. 1169, s. 6; 1969, c. 1071, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 103, ss. 1, 2; c. 179, s. 5; 1979, 2nd Sess., c. 1085, s. 1; 1989, c. 37, s. 6; c. 580; 1991, c. 228, s. 1; 1991 (Reg. Sess., 1992), c. 1007, ss. 12, 13; 1993, c. 532, s. 5.)

Effect of Amendments. —

The 1993 amendment, effective January 1, 1994, in subsection (a) added "Warrants for Collection of Taxes" at the beginning, deleted "imposed by this Subchapter, or any other tax", deleted "of Revenue" following both instances of "Secretary", substituted "the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1)" for "it became due and payable, and after it was assessed"; in subsection (b) added "Garnishment and Attachment" at the beginning, substituted "month as provided in subdivision (e)(4) of this section" for "month" in the third paragraph; in subsection (c), in the first paragraph, added "Certificate or Judgment for Taxes" at the beginning, substituted "allowed except as provided in subdivision (e)(1) of this section)" for "allowed)" at the end, in the second paragraph substituted "G.S. 105-241.2(e) for jeopardy levies" for "subsection (e) of G.S. 105-241.2", added the third paragraph; added the first paragraph of subsection (c1), including the subdivisions; in the form following subsection (c1) substituted "Officer" for "Collector"; added "Remedies Cumulative" at the beginning of subsection (d); and added subsections (e), (f), and (g).

CASE NOTES

Cited in County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 105-248. Purpose of State taxes.

The taxes levied in this Subchapter are for the expenses of the State government, the appropriations to its educational, charitable, and penal institutions, the interest on the debt of the State, the public schools, and other specific appropriations made by law, and shall be collected and paid into the General Fund. (1939, c. 158, s. 919; 1981, c. 3; 1993 (Reg. Sess., 1994), c. 745, s. 17.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted the present section catchline for "State taxes; purposes"; deleted "pensions for Confederate soldiers and widows" preceding "the interest on the debt," substituted "the public schools" for "for public schools," deleted "of the State Treasurer" from the end, deleted the former second paragraph regarding laws or acts of incorporation which contained limitations or exemptions from taxation, and made stylistic changes.

§ 105-249. Free privilege licenses for blind people.

(a) Notwithstanding any other provisions of law, any blind person, of the age of 18 years or more, desiring to operate as sole proprietor a legitimate business, trade, employment or profession of any kind to provide a livelihood for himself and dependents, if any, shall be exempt from procuring any license, and from liability for paying any license tax or fee, required or levied by the State, or any department, licensing board, or commission thereof, or by any county or municipality in the State, for or in connection with the privilege of engaging in or carrying on such business, trade, employment or profession.

(b) The term "blind persons," as used herein, is defined to mean any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees.

(c) The provisions of this section shall not extend to any such sole proprietor who shall permit more than one person other than himself to work regularly in connection with such business, trade, employment or profession for remuneration or recompense of any kind whatsoever, unless such other person in excess of one so remunerated shall be a blind person as defined in subsection (b), above.

(d) Every blind person operating said business, trade, employment or profession under the provisions of this section shall be required to keep at his place of business the statement of a qualified physician or optometrist that he is totally blind or that his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or that the widest diameter of the visual field does not subtend an angle greater than 20 degrees.

(e) This section shall not apply to N.C. sales tax or to licenses, taxes, and fees required or levied in connection with the manufacture, processing, handling or selling of intoxicating beverages, and shall not apply to any license issued only upon satisfactory completion of a qualification examination conducted by the State or any board or commission thereof.

(f) **(Effective October 1, 1994 — See editor's note)** Any person violating the provisions of subsection (d) of this section shall be guilty of a Class 3 misdemeanor and only fined not to exceed twenty-five dollars ($25.00) for each offense. (1933, c. 53; 1935, c. 162; 1939, c. 306; 1943, c. 122; 1953, c. 1039, s. 1; 1971, c. 1231, s. 1; 1993, c. 539, s. 711; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (f) inserted "Class 3" preceding "misdemeanor".

§ 105-251. Type of information a taxpayer must provide.

A taxpayer must give information to the Secretary when the Secretary requests the information. The Secretary may request a taxpayer to provide only the following kinds of information on a return, a report, or otherwise:

(1) Information that identifies the taxpayer.
(2) Information needed to determine the liability of the taxpayer for a tax.
(3) Information needed to determine whether an item is subject to a tax.
(4) Information that enables the Secretary to collect a tax.
(5) Other information the law requires a taxpayer to provide or the Secretary needs to perform a duty a law requires the Secretary to perform. (1939, c. 158, s. 921; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 661, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 5, 1994, substituted "Type of information a taxpayer must provide" for "Information must be furnished" in the catchline of this section, and rewrote the section.

§ 105-256. (See note) Reports prepared by Secretary of Revenue.

(a) Reports. — The Secretary shall prepare and publish the following:

(1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, geographic distribution of taxes, and other facts considered pertinent and valuable.
(2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter, other than a provision in Subchapter II, and gives an estimate of the amount by which revenue is reduced by each

tax expenditure. A "tax expenditure" is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State. An estimate of the amount by which revenue is reduced by a tax expenditure may be stated as ranging between two amounts if the Department does not have sufficient data to make a more specific estimate.

(3) As often as required, a report that is not listed in this subsection but is required by another law.

(4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.

(5) At least once a year, a statement of the taxpayer's bill of rights, which sets forth in simple and nontechnical terms the following:

a. The taxpayer's right to have the taxpayer's tax information kept confidential.

b. The rights of a taxpayer and the obligations of the Department during an audit.

c. The procedure for a taxpayer to appeal an adverse decision of the Department at each level of determination.

d. The procedure for a taxpayer to claim a refund for an alleged overpayment.

e. The procedure for a taxpayer to request information, assistance, and interpretations or to make complaints.

f. Penalties and interest that may apply and the basis for requesting waiver of a penalty.

g. The procedures the Department may use to enforce the collection of a tax, including assessment, jeopardy assessment, enforcement of liens, and garnishment and attachment.

(b) Information. — The Secretary may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution. — The Secretary shall distribute reports prepared by the Secretary as follows without charge:

(1) Five copies to the Division of State Library of the Department of Cultural Resources, as required by G.S. 125-11.7.

(2) Five copies to the Legislative Services Commission for the use of the General Assembly.

(3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice is furnished under G.S. 7A-343.1.

(4) One copy of the tax expenditure report to each member of the General Assembly and, upon request, one copy of any other report to each member of the General Assembly.

(5) One copy of the taxpayer's bill of rights to each taxpayer the Department contacts regarding determination or collection of a tax, other than by providing a tax form.

(6) Upon request, one copy of the taxpayer's bill of rights to each taxpayer.

The Secretary may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs. (1939, c. 158, s. 926;

1955, c. 1350, s. 8; 1973, c. 476, s. 193; 1991, c. 10, s. 1; 1991 (Reg. Sess., 1992), c. 1007, s. 16; 1993, c. 433, s. 1; c. 532, s. 6.)

Cross References. — As to the annual report by the Department of Revenue to the Joint Legislative Commission on Governmental Operations, see G.S. 143B-218.1.

Editor's Note. — This section was amended by Session Laws 1993, c. 433, s. 1, effective retroactively to July 1, 1993, and by Session Laws 1993, c. 532, s. 6, effective January 1, 1994.

Session Laws 1993, c. 532, which amended this section, in s. 13 provides: "The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education."

Effect of Amendments. —

Session Laws 1993, c. 433, s. 1, effective retroactively to July 1, 1993, in subdivision (a)(2) substituted "Subchapter II, and gives an estimate of" for "Subchapter II and, when possible to do without impairing other duties of the Secretary or the Department of Revenue", and added the last sentence; in subdivision (c)(4) substituted the present language for "Upon request, one copy to each member of the General Assembly"; and made other stylistic changes.

Session Laws 1993, c. 532, s. 6, effective January 1, 1994, deleted "of Revenue" following "Secretary" throughout the section; and added subdivisions (a)(5), (c)(5), and (c)(6).

§ 105-258.1. Taxpayer interviews.

(a) Scope. — This section applies to in-person interviews between a taxpayer and an officer or employee of the Department relating to the determination or collection of a tax, other than an in-person interview concerning any of the following:

(1) A criminal investigation.

(2) The determination or collection of a tax imposed by Article 2D of this Chapter.

(3) The assessment under G.S. 105-241.1(g) of a tax whose collection is in jeopardy.

(4) The levy or execution under G.S. 105-241.2(e) of an assessment whose collection is in jeopardy.

(b) Recording of Interview. — The Department shall allow a taxpayer to make an audio recording of an interview at the taxpayer's expense and using the taxpayer's equipment. The Department may make an audio recording of an interview at its own expense and using its own equipment. The Department shall, upon request of the taxpayer, provide the taxpayer a transcript of an interview recorded by the Department; the Department may charge the taxpayer for the cost of the requested transcription and reproduction of the transcript.

(c) Disclosure of Procedure. — At or before an initial interview relating to the determination of a tax, the Department shall provide the taxpayer a written explanation of the audit process and the taxpayer's rights in the process. At or before an initial interview relating to the collection of a tax, the Department shall provide the taxpayer a written explanation of the collection process and the taxpayer's rights in the process.

(d) Right of Consultation. — A taxpayer may authorize a person to represent the taxpayer in an interview if the person has a written power of attorney executed by the taxpayer. The Department may not require a taxpayer to accompany the taxpayer's representative to the interview unless the Secretary has summoned the taxpayer pursuant to G.S. 105-258.

(e) Suspension of Interview. — The Department shall suspend an interview relating to the determination of a tax if the taxpayer is not accompanied by a representative and, at any time during the interview, expresses the desire to consult with another person. (1993, c. 532, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 18.)

Editor's Note. — Session Laws 1993, c. 532, s. 14 made this section effective January 1, 1994.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subsection (e), inserted "the taxpayer is not accompanied by a representative and," deleted "the taxpayer" preceding "expresses the desire," and substituted "another person" for "a person permitted to represent the taxpayer before the Department".

§ 105-259. (See notes) Secrecy required of officials; penalty for violation.

(a) Definitions. — The following definitions apply in this section:

(1) Employee or officer. — The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. — Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be identified or (ii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. — An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, and account and identification numbers of a corporation liable for corporate income or franchise taxes to enable the Secretary of State to notify the corporation of the annual report filing requirement or that its articles of incorporation or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1939, c. 158, s. 928; 1951, c. 190, s. 2; 1973, c. 476, s. 193; c. 903, s. 4; c. 1287, s. 13; 1975, c. 19, s. 29; c. 275, s. 7; 1977, c. 657, s. 6; 1979, c. 495; 1983, c. 7; 1983 (Reg. Sess., 1984), c. 1004, s. 3; c. 1034, s. 125; 1987, c. 440, s. 4; 1989, c. 628; c. 728, s. 1.47; 1989 (Reg. Sess., 1990), c. 945, s. 15; 1993, c. 485, s. 31; c. 539, s. 712; 1994, Ex. Sess., c. 14, s. 51; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 679, s. 8.4.)

Editor's Note. —

Session Laws 1994, Extra Session, c. 14, s. 51(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 712, which would have amended this section, effective October 1, 1994, as it read prior to amendment by Session Laws 1993, c. 485, s. 31, by substituting "Class 1 misdemeanor" for former penalty provisions.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 485, s. 31, effective July 23, 1993, rewrote this section.

The 1994 Extra Session amendment by c. 14, s. 51(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor and may be fined not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000), imprisoned for up to two years, or both" in subsection (c).

Session Laws 1993 (Reg. Sess., 1994), c. 679, "The Workers' Compensation Reform Act of 1994," in s. 8.4, effective July 5, 1994, added subdivision (b)(19).

§ 105-260. Evaluation of Department personnel.

The Secretary may not use records of tax enforcement results, or production goals based on these records, as the sole criteria in evaluating employees of the Department who are directly involved in tax collection activities or in evaluating the immediate supervisors of these employees. The Secretary must consider records of taxpayer complaints that named an employee as discourteous, unresponsive, or incompetent in evaluating the employee. (1939, c. 158, s. 929; 1973, c. 476, s. 193; 1981, c. 859, s. 79; c. 1127, s. 53; 1993, c. 532, s. 8.)

Editor's Note. — Session Laws 1993, c. 532, s. 13 provides: "The Department of Revenue shall report annually to the Joint Legislative Commission on Governmental Operations on the quality of services provided to taxpayers, including telephone and walk-in assistance and taxpayer education."

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, substituted "Evaluation of Department personnel" for "Deputies and clerks" in the catchline to this section, and rewrote this section.

§ 105-264. Effect of Secretary's interpretation of revenue laws.

It shall be the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes a rule or a bulletin, a taxpayer who relied upon the rule or bulletin before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the rule or bulletin was changed and was not paid by reason of reliance upon the rule or bulletin. If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change. (1939, c. 158, s. 933; 1955, c. 1350, s. 4; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; 1991, c. 45, s. 29; 1993, c. 532, s. 9.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, substituted "Secretary's interpretation of revenue laws" for "interpretation, regulation, or ruling" in the catchline to this section, and rewrote the section.

§ 105-266. Overpayment of taxes to be refunded with interest.

(a) Refund. — If the Secretary discovers that a taxpayer has overpaid the correct amount of a tax, that overpayment shall be refunded to the taxpayer as soon as possible together with any applicable interest. The Secretary shall not refund an overpayment before the taxpayer has filed the final return for the tax period. The Secretary may not refund any of the following:

(1) An overpayment set off under Chapter 105A, the Setoff Debt Collection Act, or under another setoff debt collection program authorized by law.

(2) An income tax overpayment the taxpayer has elected to apply to another purpose as provided in this Article.

(3) An individual income tax overpayment of less than one dollar ($1.00) or another tax overpayment of less than three dollars ($3.00), unless the taxpayer makes a written demand for the refund.

(b) Interest. — An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

Interest on an overpayment of a tax, other than a tax levied under Article 4 of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.
(2) The date the final return was due to be filed.
(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code.

(c) Statute of Limitations. — The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. — No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. — Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:
   a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.
   b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. — Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(d) Effect of Refund. — A refund made under this section does not absolve the taxpayer of a tax liability that may in fact exist; the Secretary may make an assessment for any deficiency as provided in this Article.

(e) Scope. — This section does not apply to interest required under G.S. 105-267. This section applies to a refund payable to a husband and wife who filed a joint return. (1939, c. 158, s. 937; 1941, c. 50, s. 10; 1947, c. 501, s. 9; 1949, c. 392, s. 6; 1951, c. 643, s. 9; 1957, c. 1340, s. 14; 1973, c. 476, s. 193; c. 903, s. 5; 1975, c. 74, s. 3; 1979, c. 801, s. 90; 1981 (Reg. Sess., 1982), c. 1223, s. 2; 1989, c. 728, s. 1.48; 1991 (Reg. Sess., 1992), c. 930, s. 23; 1993, c. 315, s. 3; 1993 (Reg. Sess., 1994), c. 662, ss. 2, 3.)

Editor's Note. — Session Laws 1993, c. 364, s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

Session Laws 1993 (Reg. Sess., 1994) c. 662, which amended this section, in s. 3 provides: "In order to receive a refund that would be barred if not for the provisions of Section 2 of this act, the taxpayer must make or renew a demand for the refund on or after the date this act is ratified [July 5, 1994]. For the purpose of determining the interest on a refund demanded on or after the date this act is ratified, G.S. 105-266(b), as rewritten by Chapter 315 of the 1993 Session Laws, is effective retroactively for taxable years beginning on or after January 1, 1989."

Effect of Amendments. —

The 1993 amendment, effective July 9, 1993, and applicable to overpayments reflected in final returns filed on or after the date of notification, added the subsection designations and subsection catchlines; rewrote subsection (a); added subsection (b); rewrote subsection (c); added subsection (d); and added the catchline for subsection (e). See the Editor's Note for special applicability provisions pertaining to subsection (b) as rewritten by the 1993 amendment.

The 1993 (Reg. Sess., 1994) amendment, effective retroactively for taxable years beginning on or after January 1, 1989, in subsection (c) added the introductory language, added the subdivision (c)(1) designation and catchline, and added subdivisions (c)(2) and (c)(3).

§ 105-266.1. Refunds of overpayment of taxes.

(a) If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the taxpayer may apply to the Secretary for refund of the tax or additional tax at any time within three years after the date set by the statute for the filing of the return or application for a license or within six months after the date of payment of the tax or additional tax, whichever is later.

The Secretary shall grant a hearing on each timely request for a refund. Within 60 days after a timely request for a refund has been filed and at least 10 days before the date set for the hearing, the Secretary shall notify the taxpayer in writing of the time and place at which the hearing will be conducted. The date set for the hearing shall be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once, at the request of the taxpayer or the Secretary, for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

Within 90 days after conducting a hearing under this subsection, the Secretary shall make a decision on the requested refund, notify the taxpayer of the decision, and adjust the computation of the tax in accordance with the decision. The Secretary shall refund to the taxpayer the amount of any tax the Secretary finds was paid incorrectly or paid in excess of the tax due, except that there shall be no refund to the taxpayer of any sum set off under the provisions of Chapter 105A, the Set-off Debt Collection Act.

(b) The rules of evidence do not apply in a hearing before the Secretary of Revenue under this section. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax or additional tax assessed under this section.

(c) Within 90 days after notification of the Secretary's decision with respect to a demand for refund of any tax or additional tax under this section, an aggrieved taxpayer may, instead of petitioning for administrative review by the Tax Review Board under G.S. 105-241.2, bring a civil action against the Secretary for recovery of the alleged overpayment. If the alleged overpayment is more than two hundred dollars ($200.00), the taxpayer may bring the action either in the Superior Court of Wake County or in the superior court of the county in which the taxpayer resides; if the alleged overpayment is two hundred dollars ($200.00) or less, the taxpayer may bring the action in any State court of competent jurisdiction in Wake County. If upon trial it is determined that there has been an overpayment of tax or additional tax, judgment shall be rendered therefor, with interest, and the State shall refund the amount due.

(d) Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that the Secretary, if he should appeal, shall not be required to give any undertaking or make any deposit to secure the cost of such appeal.

(e) Nothing in this section shall be construed to conflict with or supersede the provisions of G.S. 105-241.2, and, with respect to tax paid to the Secretary of Revenue, the rights granted by this section are in addition to the rights provided by G.S. 105-267. (1957, c. 1340, s. 10; 1969, c. 44, s. 66; c. 1132, s. 2; 1973, c. 476, s. 193; 1979, c. 801, s. 91; 1981 (Reg. Sess., 1982), c. 1211, s. 2; 1987, c. 827, s. 22; 1993, c. 485, s. 14; c. 532, s. 10.)

Editor's Note. — Session Laws 1993, c. 364, s. 3 provides: "Notwithstanding the time limitations of G.S. 105-266 and G.S. 105-266.1, a refund of an overpayment of a tax levied on tires sold for placement on newly manufactured vehicles under former G.S. 130A-309.54(a) (repealed) or under G.S. 105-187.16 is timely if a demand for the refund is filed on or before July 1, 1994. Notwithstanding G.S. 105-266, an interest rate of five percent (5%) per year applies to refunds of tax paid on new tires that were purchased before July 15, 1992, and are exempted from the scrap tire tax by this act."

Effect of Amendments. — Session Laws 1993, c. 485, s. 14, effective July 23, 1993, in subsection (c) substituted "section, an aggrieved taxpayer may, instead" for "section any taxpayer aggrieved thereby, in lieu", substituted "G.S. 105-241.2" for "G.S. 105-241.1, may" preceding "bring a civil action", deleted "of Revenue" following "Secretary", substituted "overpayment. If the alleged overpayment is more than two hundred dollars ($200.00), the taxpayer may bring the action either" for "overpayment.", deleted a comma after "Wake County", substituted "resides; if the alleged overpayment is" for "resides; if the alleged overpayment exceeds two hundred dollars ($200.00), and if", inserted "the taxpayer may bring the action" preceding "in any State Court", substituted "is determined" for "shall be determined", substituted "an overpayment of tax" for "any overpayment of tax", and substituted "State shall refund the amount due" for "same shall be refunded by the State".

Session Laws 1993, c. 532, s. 10, effective January 1, 1994, in subsection (a), in the first paragraph, substituted "If a taxpayer claims that a tax or an additional tax paid by the taxpayer was excessive or incorrect, the" for "Any", deleted "of Revenue" following "Secretary", twice inserted "the" preceding "tax or additional tax", deleted "paid by him" preceding "at any time within", substituted "after the date of payment" for "from the date of payment", added the second paragraph, and rewrote the third paragraph.

§ 105-267. Taxes to be paid; suits for recovery of taxes.

CASE NOTES

Section Is Constitutional. — The refund procedure provided in this section is free from any constitutional infirmity. It may, therefore, effectively bar actions for refunds in the tax years for which the procedure was not followed. Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

A constitutional defense to a tax does not exempt a plaintiff from the mandatory procedure, etc. — That a challenge is to the constitutionality of a tax does not exempt a taxpayer from following the statute's mandatory procedure. Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

Taxpayer Required to Pay Tax and Sue for Recovery. — This statute does not permit taxpayers to challenge the legality, or constitutionality, of a tax before paying the tax. Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

Class Demand Letters Did Not Constitute Refund Demands. — Where the only demands for tax refunds alleged or proved were class demand letters which did not constitute refund demands as required by this section, the necessary prerequisite to filing this action against the State for the refunds claimed was not met. Swanson v. State, 335 N.C. 674, 441 S.E.2d 537 (1994).

§ 105-269.3. Enforcement of Subchapter V and fuel inspection tax.

The State Highway Patrol and law enforcement officers and other appropriate personnel in the Division of Motor Vehicles of the Department of Transportation may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers of the Division of Motor Vehicles have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. (1963, c. 1169, s. 6; 1991, c. 42, s. 16; 1991 (Reg. Sess., 1992), c. 1007, s. 17; 1993, c. 485, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 19.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "Enforcement" for "Administration and enforcement" in the catchline to this section; and deleted the former first sentence, which read "This Article applies to taxes levied under Subchapter V of this Chapter and to inspection fees levied under Chapter 119 of the General Statutes."

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in the section catchline substituted "tax" for "fee."

§ 105-269.5. Contribution of income tax refund to Wildlife Conservation Account.

Any taxpayer entitled to a refund of income taxes under Article 4 of this Chapter may elect to contribute all or part of the refund to the Wildlife Conservation Account established under G.S. 143-247.2 to be used for the management, protection, and preservation of wildlife in accordance with that statute. The Secretary shall provide appropriate language and space on the income tax form in which to make the election. The taxpayer's election becomes irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Conservation Account. (1983, c. 865, s. 2; 1991, c. 45, s. 20; 1993, c. 543, s. 6.)

Effect of Amendments. —

The 1993 amendment, effective July 24, 1993, substituted "Conservation Account" for "Fund" in the catchline to this section; substituted "Conservation Account established under G.S. 143-247.2 to be used for the management, protection, and preservation of wildlife in accordance with that statute" for "Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened", deleted "of Revenue" following each instance of "Secretary"; substituted "becomes" for "shall become" in the third sentence; and substituted "Conservation Account" for "Fund to be used by the Wildlife Resources Commission only for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for these purposes" in the last sentence.

§§ 105-269.7 through 105-269.14: Reserved for future codification purposes.

§ 105-269.15. Income tax credits of partnerships.

(a) Pass-Through of Credit. — A partnership may pass through to each of its partners the partner's distributive share of an income tax credit for which the partnership qualifies. Except as otherwise provided in this Chapter, all limitations on an income tax credit apply to the partnership, except the following:

(1) The limitation that the credit may not exceed the amount of income tax imposed on the taxpayer.

(2) A cap on the otherwise allowable amount of the credit, expressed as a specific maximum dollar amount or a specific percentage of tax imposed for the taxable year.

(b) Allowance of Credit to Partner. — A partner's distributive share of an income tax credit passed through by a partnership is allowed to the partner only to the extent the partner would have qualified for the credit if the partner stood in the position of the partnership. All limitations on an income tax credit apply to each partner to the extent of the partner's distributive share of the credit, except that a corporate partner's distributive share of an individual income tax credit is allowed as a corporation income tax credit to the extent the corporate partner could have qualified for a corporation income tax credit if it stood in the position of the partnership. All limitations on an income tax credit apply to the sum of the credit passed through to the partner plus the credit for which the partner qualifies directly.

(c) Determination of Distributive Share. — A partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code. (1993 (Reg. Sess., 1994), c. 674, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 674, s. 5, made this section effective for taxable years beginning on or after January 1, 1993.

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

ARTICLE 11.

Short Title, Purpose, and Definitions.

§ 105-271. Official title.

CASE NOTES

First Lien Priority of Ad Valorem Tax Liens. — In the Machinery Act the General Assembly has expressly recognized the first lien priority to be afforded local ad valorem tax liens by its recommended wording of documents entitled "orders of collection" which are issued under seal by local governing bodies. County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

Cited in In re Perry-Griffin Found., 108 N.C. App. 383, 424 S.E.2d 212 (1993).

§ 105-273. Definitions.

When used in this Subchapter (unless the context requires a different meaning):

(1) "Abstract" means the document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) "Appraisal" means both the true value of property and the process by which true value is ascertained.

(3) "Assessment" means both the tax value of property and the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(5) "Collector" or "tax collector" means any person charged with the duty of collecting taxes for a county or municipality.

(5a) "Contractor" means a taxpayer who is regularly engaged in building, installing, repairing, or improving real property.

(6) "Corporation" includes nonprofit corporation and every type of organization having capital stock represented by shares.

(6a) "Discovered property" includes all of the following:

a. Property that was not listed during a listing period.
b. Property that was listed but the listing included a substantial understatement.
c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) "To discover property" means to determine any of the following:
  a. Property has not been listed during a listing period.
  b. A taxpayer made a substantial understatement of listed property.
  c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) "Document" includes book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, and any other thing conveying information.

(7a) "Failure to list property" includes all of the following:
  a. Failure to list property during a listing period.
  b. A substantial understatement of listed property.
  c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) "Intangible personal property" means patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, and other like property.

(8a) "Inventories" means (i) goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and contractors, and (ii) goods held by contractors to be furnished in the course of building, installing, repairing, or improving real property. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and wholesale merchants and contractors, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.

(9) "List" or "listing," when used as a noun, means abstract.

(10) Repealed by Session Laws 1987, c. 43, s. 1, effective April 2, 1987.

(10a) "Local tax official" includes a county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, and the municipal equivalents of these officials.

(10b) "Manufacturer" means a taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) "Municipal corporation" and "municipality" mean city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, or other district or unit of local government by or for which ad valorem taxes are levied.

(12) "Person" and "he" include any individual, trustee, executor, administrator, other fiduciary, corporation, limited liability company, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(13) "Real property," "real estate," and "land" mean not only the land itself, but also buildings, structures, improvements, and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto. These terms also mean a manufactured home as defined in G.S. 143- 143.9(6) if it is a multi-section residential structure (consisting of two or more sections); has the moving hitch, wheels, and axles removed; and is placed upon a permanent enclosed foundation on land owned by the owner of the manufactured home.

(13a) "Retail Merchant" means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) "Substantial understatement" means the omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) "Tangible personal property" means all personal property that is not intangible and that is not permanently affixed to real property.

(15) "Tax" and "taxes" include the principal amount of any tax, costs, penalties, and interest imposed upon property tax or dog license tax.

(16) "Taxing unit" means a county or municipality authorized to levy ad valorem property taxes.

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation.

(18) "Valuation" means appraisal and assessment.

(19) "Wholesale Merchant" means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale. (1939, c. 310, s. 2; 1971, c. 806, s. 1; 1973, c. 695, ss. 14, 15;

1985, c. 656, s. 20; 1985 (Reg. Sess., 1986), c. 947, ss. 3, 4; 1987, c. 43, s. 1; c. 440, s. 2; c. 805, s. 3; c. 813, ss. 1-4; 1991, c. 34, s. 3; 1991 (Reg. Sess., 1992), c. 975, s. 1; c. 1004, s. 1; 1993, c. 354, s. 23; c. 459, s. 1.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — Session Laws 1993, c. 354, s. 23, effective October 1, 1993, inserted "limited liability company" in subdivision (12).

Session Laws 1993, c. 459, s. 1, effective for taxes imposed for taxable years beginning on or after July 1, 1994, deleted the former second paragraph of subdivision (8a), dealing with manufacturers and retail and wholesale merchants.

CASE NOTES

Used Machinery Is Not Inventory. — Where taxpayer which acquired used machinery and equipment primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business, the equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property was not excluded from ad valorem taxation. In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

Applied in Computer Sales Int'l, Inc. v. Forsyth Mem. Hosp., 112 N.C. App. 633, 436 S.E.2d 263 (1993).

Quoted in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

Cited in In re Philip Morris U.S.A, 335 N.C. 227, 436 S.E.2d 828 (1993).

ARTICLE 12.

Property Subject to Taxation.

§ 105-274. Property subject to taxation.

CASE NOTES

Used Machinery and Equipment. — Where taxpayer which acquired used machinery and equipment primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business, the equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property was not excluded from ad valorem taxation. In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

Stated in In re Atl. Coast Conference, 112 N.C. App. 1, 434 S.E.2d 865 (1993).

Cited in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

§ 105-275. Property classified and excluded from the tax base.

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

(1) Repealed by Session Laws 1987, c. 813, s. 5.

(2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting fur-

ther shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)

(3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.

(4) Repealed by Session Laws 1987, c. 813, s. 5.

(5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Viet Nam Era so long as they are owned by:
  a. A person to whom a vehicle has been given by the United States government or
  b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.

(6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of Environment, Health, and Natural Resources or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.

(7) Real and personal property that is:
  a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and
  b. Appropriated exclusively for public parks and drives.

(8)a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environment, Health, and Natural Resources or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed;
2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;
3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environment, Health, and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment, Health, and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment, Health, and Natural Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.

c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.

(9) through (11) Repealed by Session Laws 1987, c. 813, s. 5.

(12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner for educational and scientific purposes as a protected natural area. (For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)

(13) Repealed by Session Laws 1973, c. 904.

(14) Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.

(15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)

(16) Non-business Property. — As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.

(17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstand-

ing the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by the organization, together with as much additional adjacent real property as may be necessary for the convenient normal use of the buildings. Notwithstanding the exclusive-use requirement of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed, or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section. Nothing in this subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.

(20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.

(21) The first thirty-eight thousand dollars ($38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under Title 38, section 801, United States Code Annotated. This exclusion shall be the total amount of the exclusion applicable to such property.

(22) Repealed by Session Laws 1987, c. 813, s. 5.

(23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.

(24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

(25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.

(26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.

(27), (28) Repealed by Session Laws 1983, c. 643, s. 1.

(29) Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement prepared and recorded under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.

(29a) Land within an historic district held, by a nonprofit corporation organized for historic preservation purposes, for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.

(30) Repealed by Session Laws 1987, c. 813, s. 5.

(31) Money, whether on hand or on deposit at a bank, a credit union, a savings and loan association, or an insurance company.

(32) Real and personal property owned by a home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter, and used in the operation of that home. The term "home for the aged, sick, or infirm" means a self-contained community that (i) is designed for elderly residents; (ii) operates a skilled nursing facility, an intermediate care facility, or a home for the aged; (iii) includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which provides that in the event of dissolution, its assets will revert or be conveyed to an entity organized exclusively for charitable, educational, scientific, or religious purposes, and which qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986; (v) is owned, operated, and managed by one of the following entities:

A. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;

B. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;

C. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or

D. A nonprofit corporation governed by a board of directors at least a majority of whose members elected for terms commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be selected by, one or more entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and

(vi) has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy.

(32a) Inventories owned by contractors.

(33) Inventories owned by manufacturers.

(34) Inventories owned by retail and wholesale merchants.

(35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).

(36) Real and personal property belonging to the North Carolina Low-Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes.

(37) Poultry and livestock and feed used in the production of poultry and livestock.

(38) Real and personal property belonging to the North Carolina Hazardous Waste Management Commission created under Chapter 130B of the General Statutes.

(39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a local

government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by such unit of local government. If only part of the property is used for a public purpose, only that part is exempt from the tax. This subdivision shall not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.

(40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.

b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39.)

Effect of Amendments. — The 1993 amendment, effective for taxes imposed for taxable years beginning on or after July 1, 1994, added subdivision (40).

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subdivision (19) in the first sentence inserted "the Woodmen of the World," substituted "the organization" for "said organization," substituted "as much additional" for "such additional," deleted "thereon" from the end; in the second sentence substituted "of this subdivision" for "hereinabove established," added a comma following both instances of "assessed" and the one instance of "value"; and in the last sentence substituted "subdivision" for "section."

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Constitutionality of Subdivision (32). — Subdivision (32) of this section does not discriminate against individual property owners who own their property for residential purposes in violation of the rule of uniformity in taxation established under N.C. Const., Art. V, § 2. In re Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

The distinction between "homes for the aged, sick, or infirm" and individual residential property owners under subdivision (32) of this section is not unconstitutional under the equal protection clause of N.C. Const., Art. I, § 19. In re Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

Used Machinery Is Not Inventory. — Where taxpayer which acquired used machinery and equipment primarily for use in its manufacture of textiles and only held the goods for sale after the property was no longer useful in taxpayer's textile business, the equipment and machinery at issue were not inventory held for sale in the regular course of business by a wholesale merchant. Consequently, the property was not excluded from ad valorem taxation. In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993), cert. denied, 335 N.C. 555, 441 S.E.2d 112 (1994).

§ 105-275.1. Reimbursement for exclusion of manufacturers' inventories and poultry and livestock.

(a) Initial Distribution. — On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of (i) all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; (ii) all livestock and poultry and feed used in the production of livestock and poultry that was required to be listed and assessed as of January 1, 1987, and was listed on or before September 1, 1987, in the county or city under this Subchapter; (iii) all the crops and other agricultural or horticultural products held for sale, whether in process or ready for sale, owned by taxpayers regularly engaged in the growth, breeding, raising, or other production of new products for sale, that were not included under subdivision (ii) above and that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; (iv) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1987, and before January 1, 1988; and (v) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1988, and before July 1, 1990. The list shall contain the value of the inventories and other items as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers and other items described in subdivisions (ii) and (iii) above that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories described in subdivisions (i) and (iv) above contained in the list submitted by the city or county, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives funds under this subsection. The county or city shall distribute to each special district in the county or city an amount equal to the average rate for the district multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in this subsection.

(b) **(Effective until July 1, 1995)** Subsequent Distributions. — As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1991, except as provided in subsection (f), the Secretary shall pay to each county and city the amount it received under this section the preceding year plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivision (v) of subsection (a) contained in the list submitted by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practical after January 1, 1992, except as provided in subsection (f), the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before April 30, 1993, except as provided in subsection

§ 105-275.1(b) is set out twice. See notes.

(f), the Secretary shall distribute to each county and city ninety-nine and eighty-one one-hundredths percent (99.81%) of the amount it received under this section the preceding year. Thereafter, except as provided in subsection (f), on or before April 30 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(b) **(Effective July 1, 1995)** Subsequent Distributions. — As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1991, except as provided in subsection (f), the Secretary shall pay to each county and city the amount it received under this section the preceding year plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivision (v) of subsection (a) contained in the list submitted by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practical after January 1, 1992, except as provided in subsection (f), the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before April 30, 1993, except as provided in subsection (f), the Secretary shall distribute to each county and city ninety-nine and eighty-one one-hundredths percent (99.81%) of the amount it received under this section the preceding year. Thereafter, until August 1995, except as provided in subsection (f), on or before April 30 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this section. Beginning in August 1995 and each year thereafter, except as provided in subsection (f), the Secretary shall distribute to each county and city sixty percent (60%) of this amount on or before August 30 and the remaining forty percent (40%) on or before the following April 30.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has

§ 105-275.1(b) is set out twice. See notes.

been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, until August 1995, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. Each year thereafter, beginning in August 1995, as soon as practical after receiving funds under this subsection in August, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to sixty percent (60%) of the amount it distributed among such districts in April 1995, and as soon as practicable after receiving funds under this subsection in April, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to forty percent (40%) of the amount it distributed among such districts in April 1995.

The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(c) Use. — Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) "City" Defined. — As used in this section, the term "city" has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. — To pay for the distribution required by this section and the cost to the Department of Revenue of making the distribution, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the amount distributed and the cost of making the distribution.

(f) Correction of Errors. — If the Secretary discovers that the amount or value of any inventories or other items listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsection (b) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1993 if it had not overstated or understated the amount or value of any inventories or other items, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories or other items, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories or other items. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1993 if it had not overstated or understated the amount or value of any inventories or other items. (1987, c. 622, s. 7; c. 813, s. 7; 1987 (Reg. Sess., 1988), c. 1041, s. 1; 1989, c. 752, s. 52(d); 1989 (Reg. Sess., 1990), c. 1066, s.

29(b); 1991 (Reg. Sess., 1992), c. 993, ss. 2, 7; c. 1044, s. 9.5(a), (b); 1993, c. 321, s. 26(b).)

Subsection (b) Set Out Twice. — The first version of subsection (b) set out above is effective until July 1, 1995. The second version of subsection (b) set out above is effective July 1, 1995.

Editor's Note. — Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective July 1, 1995, in the sixth sentence of the first paragraph of subsection (b), inserted "until August 1995"; added the seventh and eighth sentences of the first paragraph of subsection (b); in the first sentence of the third paragraph of subsection (b) inserted "until August 1995"; added the second sentence of the third paragraph of subsection (b); and made other stylistic changes.

§ 105-277A. Reimbursement for exclusion of retailers' and wholesalers' inventories.

(a) Submission of Claims. — On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

(b) **(Effective until July 1, 1995)** First Per Capita Distribution. — As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars ($15,745,000). Thereafter, as soon as practicable after January 1 of 1990 and 1991, the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

§ 105-277A(b) is set out twice. See notes.

Thereafter, on or before April 30 of each year the Secretary shall distribute to each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(b) **(Effective July 1, 1995)** First Per Capita Distribution. — As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars ($15,745,000). Thereafter, as soon as practicable after January 1 of 1990 and 1991, the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before April 30 of 1992, 1993, 1994, and 1995, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Beginning August 1995 and each year thereafter, the Secretary shall determine for each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Each year, the Secretary shall distribute to each taxing unit sixty percent (60%) of this share on or before August 30 and the remaining forty percent (40%) of this share on or before the following April 30.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

§ 105-277A(b) is set out twice. See notes.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) **(Effective until July 1, 1995)** Second Per Capita Distribution. — On or before March 20, 1989, the Secretary shall allocate to each county the county's per capita share of the sum of thirty-nine million dollars ($39,000,000).

Each year thereafter, on or before April 30, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(c) **(Effective July 1, 1995)** Second Per Capita Distribution. — On or before March 20, 1989, the Secretary shall allocate to each county the county's per capita share of the sum of thirty-nine million dollars ($39,000,000).

Each year thereafter through April 1995, on or before April 30, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county the amount it received in April 1995 under this subsection. Beginning in August 1995 and each year thereafter, the Secretary shall distribute sixty percent (60%) of this amount to each county on or before August 30 and the remaining forty percent (40%) to each county on or before the following April 30.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(c1) **(Effective until July 1, 1995)** Claims-based Distribution. — On or before March 20, 1989, the Secretary shall distribute to each county and city an amount equal to the amount by which the county or city's inventory loss, as defined in subsection (d) of this section, exceeds the amount of the reimbursement received by the county or city under subsection (c) of this subsection.

Except as provided in subsection (g) of this section, each year thereafter, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection.

(c1) **(Effective July 1, 1995)** Claims-based Distribution. — On or before March 20, 1989, the Secretary shall distribute to each county and city an amount equal to the amount by which the county or city's inventory loss, as defined in subsection (d) of this section, exceeds the amount of the reimbursement received by the county or city under subsection (c) of this section.

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. Beginning in August 1995 and each year thereafter, the Secretary shall distribute sixty percent (60%) of this amount to each county and city on or before August 30 and the remaining forty percent (40%) of this amount to each county and city on or before the following April 30.

(c2) **(Effective until July 1, 1995)** Supplemental Distribution. — On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the

§ 105-277A(c2) is set out twice. See notes.

taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection.

(c2) **(Effective July 1, 1995)** Supplemental Distribution. — On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. Beginning in August 1995 and each year thereafter, the Secretary shall distribute sixty percent (60%) of this amount to each county and city on or before August 30 and the remaining forty percent (40%) of this amount to each county and city on or before the following April 30.

(c3) Distribution to Special Districts. — Of the funds received by each county and city pursuant to subsections (c), (c1), and (c2) of this section, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in proportion to the amount of each special district's inventory levy, as defined in subsection (d) of this section, as soon as practicable after the city or county receives funds under this subsection. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in subsection (a) of this section.

(d) Definitions. — The following definitions apply in this section:

(1) "City" has the same meaning as in G.S. 153A-1(1).

(2) "City's inventory loss" means the city's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the city collected taxes in 1987, but whose tax rates were not included in the city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

(3) "County's inventory loss" means the county's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the average rate for each special district for which the county collected taxes in 1987, but whose tax rates were not included in the county's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

(4) "Special district's inventory levy" means the special district's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district.

(5) **(Effective until July 1, 1995)** "Taxing unit" means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year beginning July 1 of the year preceding the date a distribution is made under this section.

(5) **(Effective July 1, 1995)** "Taxing unit" means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year preceding the fiscal year a distribution is made under this section.

(e) Population Estimates. — In making the per capita calculations under this section, the Secretary shall use the most recent annual population estimates certified by the State Budget Officer.

(f) Source of Funds. — To pay for the distribution required by this section and the cost of making the distribution, the Secretary shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the amount distributed and the cost of making the distribution.

(g) Correction of Errors. — If the Secretary discovers that the amount or value of any inventories listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsections (c1) and (c2) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories. (1985, c. 656, s. 53; 1985 (Reg. Sess., 1986), c. 947, ss. 7, 8; 1987, c. 622, s. 6; c. 813, ss. 10, 11; 1987 (Reg. Sess., 1988), c. 1041, s. 2; 1989, c. 752, s. 52(f); 1991, c. 689, s. 28(i), (j); 1991 (Reg. Sess., 1992), c. 993, ss. 3, 8; c. 1007, ss. 18, 19; 1993, c. 321, ss. 26(c)-(f), 26(j); c. 485, s. 16.)

Subsections (b), (c), (c1), (c2), and (d)(5) Set Out Twice. — The first versions of subsections (b), (c), (c1), (c2), and (d)(5) set out above are effective until July 1, 1995. The second versions of subsections (b), (c), (c1), (c2), and (d)(5) set out above are effective July 1, 1995.

Editor's Note. —

Session Laws 1993, c. 321, s. 322 is a severability clause.

Effect of Amendments. —

Session Laws 1993, c. 321, s. 26, effective July 1, 1995, in the second paragraph of subsection (b), in the first sentence substituted "On" for "Thereafter, on" and substituted "1992, 1993, 1994, and 1995" for "each year" and added the second and third sentences; in subsection (c), in the second paragraph, in the first sentence inserted "through April 1995" and added the second and third sentences; in subsection (c1), in the first paragraph substituted "section" for "subsection" at the end and in the second paragraph, in the first sentence inserted "through April 1995" and added the second and third sentences; in subsection (c2), in the second paragraph, in the first sentence inserted "through April 1995" and added the second and third sentences; and in subdivision (d)(5) deleted "beginning July 1 of the year" following "tax for the fiscal year" and substituted "fiscal year" for "date."

Session Laws 1993, c. 485, s. 16, effective July 23, 1993, substituted "State Planning Officer" for "State Budget Officer" in subsection (e).

§ 105-277.1. Property classified for taxation at reduced valuation.

(a) Exclusion. — The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first fifteen thousand dollars ($15,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

(1) Is at least 65 years of age or totally and permanently disabled.

(2) Has an income for the preceding calendar year of not more than eleven thousand dollars ($11,000).

(3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(b) Definitions. — When used in this section, the following definitions shall apply:

(1) Code. — The Internal Revenue Code, as defined in G.S. 105-228.90.

(1a) Income. — Adjusted gross income, as defined in section 62 of the Code, plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.

(1b) Owner. — A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.

(2) Repealed by Session Laws 1993, c. 360, s. 1, effective for taxes collected for taxable years beginning on or after July 1, 1994.

(2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1982, s. 20.

(3) Permanent residence. — A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.

(4) Totally and permanently disabled. — A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.

(c) Application. — An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through April 15 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner shall apply separately for his or her proportionate share of the exclusion.

(1) Elderly Applicants. — Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.

(2) Disabled Applicants. — Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she shall not be required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.

(d) Multiple Ownership. — A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the property. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed fifteen thousand dollars ($15,000). (1971, c. 932, s. 1; 1973, c. 448, s. 1; 1975, c. 881, s. 2; 1977, c. 666, s. 1; 1979, c. 356, s. 1; c. 846, s. 1; 1981, c. 54, s. 1; c. 1052, s. 1; 1985, c. 656, ss. 44, 45; 1985 (Reg. Sess., 1986), c. 982, ss. 19, 20; 1987, c. 45, s. 1; 1993, c. 360, s. 1.)

Effect of Amendments. — The 1993 amendment, effective for taxes collected for taxable years beginning on or after July 1, 1994, rewrote the section.

§ 105-277.2. Agricultural, horticultural and forestland — Definitions.

CASE NOTES

Cited in In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994).

§ 105-277.3. Agricultural, horticultural and forestland — Classifications.

CASE NOTES

The word "passed" in context of subsection (c) means that the transference or conveyance has already occurred and that for purposes of this portion of the statute, the property should be viewed in the hands of the grantee. In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994).

Present Use Violation. — Where the property met all of the requirements of subsection (c), the Property Tax Commission did not err in concluding that the property qualified for present use valuation. In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994).

Subsection (b) does not apply to subsection (c). In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994).

§ 105-277.4. Agricultural, horticultural and forestland — Application for taxation at present-use value.

CASE NOTES

Cited in In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994).

§ 105-277.11: Not in effect.

Editor's Note. — A § 105-277.11 was enacted by Session Laws 1993, c. 497, s. 21, but was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The section, therefore, never took effect.

§ 105-278.2. Burial property.

CASE NOTES

Property Not Exempted. — Where taxpayer corporation owned undeveloped, unmapped land as part of a tract of land set apart as a cemetery, which land was irrevocably dedicated for use exclusively as a cemetery under the North Carolina Cemetery Act, and where the taxpayer was not holding undeveloped land for its own burial, because the undeveloped land was irrevocably dedicated for use exclusively as a cemetery, the taxpayer could only have been holding it for the purpose of sale to others as burial sites, and as such the land did not fall under the exemption of this section as tax-exempt property. In re Lee Memory Gardens, Inc., 110 N.C. App. 541, 430 S.E.2d 451 (1993).

§ 105-278.4. Real and personal property used for educational purposes.

CASE NOTES

The Atlantic Coast Conference was not a separate entity from its constituent schools and since each member was an educational institution, exempt from taxation, then the ownership requirement of this section was met. In re Atl. Coast Conference, 112 N.C. App. 1, 434 S.E.2d 865 (1993), aff'd, 336 N.C. 69, 441 S.E.2d 550 (1994).

§ 105-278.6. Real and personal property used for charitable purposes.

(a) Real and personal property owned by:

(1) A Young Men's Christian Association or similar organization;
(2) A home for the aged, sick, or infirm;
(3) An orphanage or similar home;
(4) A Society for the Prevention of Cruelty to Animals;
(5) A reformatory or correctional institution;
(6) A monastery, convent, or nunnery;
(7) A nonprofit, life-saving, first aid, or rescue squad organization;
(8) A nonprofit organization providing housing for individuals or families with low or moderate incomes

shall be exempted from taxation if: (i) As to real property, it is actually and exclusively occupied and used, and as to personal property, it is entirely and completely used, by the owner for charitable purposes; and (ii) the owner is not organized or operated for profit.

(b) A charitable purpose within the meaning of this section is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose.

(c) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(d) Notwithstanding the exclusive-use requirements of this section, if part of a property that otherwise meets the section's requirements is used for a purpose that would require exemption under subsection (a), above, if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) Real property held by an organization described in subdivision (a)(8) is held for a charitable purpose under this section if it is held for no more than five years as a future site for housing for individuals or families with low or moderate incomes. The taxes that would otherwise be due on real property exempt under this subsection shall be a lien on the property as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit as deferred taxes and shall be payable five years after the tax year the exemption is first claimed unless the organization has constructed low- or moderate-income housing on the site. If this condition has not been met, the deferred taxes for the preceding five fiscal years shall be payable immediately, together with interest as provided in G.S. 105-360 for unpaid taxes that accrues on the deferred taxes as if they had been payable on the dates they would have originally become due. All liens arising under this subsection are extinguished upon one of the following:

(1) Payment of all deferred taxes under this subsection.

(2) Construction by the organization of low- or moderate-income housing on the site within five years after the tax year the exemption is first claimed. (1973, c. 695, s. 4; 1975, c. 808; 1993, c. 230, s. 1.)

Effect of Amendments. — The 1993 amendment, effective for taxes imposed for taxable years beginning on or after July 1, 1994, in subdivision (a)(5) deleted "or" from the end; and added subsection (e).

CASE NOTES

Quoted in In re Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

§ 105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes.

CASE NOTES

Quoted in In re Barbour, 112 N.C. App. 368, 436 S.E.2d 169 (1993).

§ 105-278.8. Real and personal property used for charitable hospital purposes.

CASE NOTES

Hospital Day Care Center. — Hospital's day care center which was open seven days a week, including holidays, from 6:00 a.m. to 12:00 midnight and aided hospital in the recruitment and retention of hospital employees was actually and exclusively used for a charitable hospital purpose as required by this section and accordingly, hospital was entitled to an exemption from ad valorem taxes for its child care center. In re Moses H. Cone Mem. Hosp., 113 N.C. App. 562, 439 S.E.2d 778 (1994).

There was no direct commercial competition between hospital's child care center and other area commercial day care centers where it did not compete directly with other commercial day care centers for patrons from the general public as it was open only to hospital employees and the center met a need of its employees that was not fulfilled by other commercial day care centers by being open seven days a week, and on holidays from 6:00 a.m. to 12:00 midnight. In re Moses H. Cone Mem. Hosp., 113 N.C. App. 562, 439 S.E.2d 778 (1994).

§ 105-282.1. Applications for property tax exemption or exclusion.

(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.

(3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (12), or (39), G.S. 105-277.1 or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not required to file an application in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.

(4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.

(5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion

approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission. If the notice of denial covers property located within a municipality, the assessor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the assessor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) The county assessor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. As to affected real and personal property, the roster shall set forth:

(1) The name of the owner of the property.
(2) A brief description of the property.
(3) A statement of the use to which the property is put.
(4) A statement of the value of the property.
(5) The total value of exempt property in the county and in each municipality therein.

(e) A duplicate copy of the roster shall be forwarded to the Department of Revenue on or before November 1, 1974. In subsequent years, on or before November 1, a report shall be filed with the Department of Revenue showing all changes since the last report. (1973, c. 695, s. 8; c. 1252; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c.

680, ss. 1-3; c. 813, s. 13; 1989, c. 674, s. 2; c. 723, s. 2; 1991, c. 34, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 3; 1993, c. 459, s. 3.)

Effect of Amendments. — The 1993 amendment, effective for taxes imposed for taxable years beginning on or after July 1, 1994, substituted "(33), (34), or (40)" for "(33), or (34)" in subdivision (a)(2).

ARTICLE 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

CASE NOTES

Charitable Trusts. — Because of the valid and enforceable restraint on alienation, property of a charitable trust itself is unmarketable; therefore, to tax the property according to normal market assumptions would be unfair to the charitable trust, and in doing so, would seriously erode and ultimately defeat the public policy of this State in favor of charitable trusts. In re Perry-Griffin Found., 108 N.C. App. 383, 424 S.E.2d 212 (1993).

Cited in In re Philip Morris U.S.A, 335 N.C. 227, 436 S.E.2d 828 (1993).

§ 105-284. Uniform assessment standard.

(a) Except as otherwise provided in this section, all property, real and personal, shall be assessed for taxation at its true value or use value as determined under G.S. 105-283 or G.S. 105-277.6, and taxes levied by all counties and municipalities shall be levied uniformly on assessments determined in accordance with this section.

(b) The assessed value of public service company system property subject to appraisal by the Department of Revenue under G.S. 105-335(b)(1) shall be determined by applying to the allocation of such value to each county a percentage to be established by the Department of Revenue. The percentage to be applied shall be either:

(1) The median ratio established in sales assessment ratio studies of real property conducted by the Department of Revenue in the county in the year the county conducts a reappraisal of real property and in the fourth and seventh years thereafter; or

(2) A weighted average percentage based on the median ratio for real property established by the Department of Revenue as provided in subdivision (1) and a one hundred percent (100%) ratio for personal property. No percentage shall be applied in a year in which the median ratio for real property is ninety percent (90%) or greater.

If the median ratio for real property in any county is below ninety percent (90%) and if the county assessor has provided information satisfactory to the Department of Revenue that the county follows accepted guidelines and practices in the assessment of business personal property, the weighted average percentage shall be applied to public service company property. In calculating the weighted average percentage, the Department shall use the assessed value figures for real and personal property reported by the county to the Local Government Commission for the preceding year. In any county which fails to demonstrate that it follows accepted guidelines and practices, the percentage to be applied shall be the median ratio for real property. The percentage established in a year in which a sales assessment ratio study is conducted shall continue to be applied until another study is conducted by the Department of Revenue.

(c) Notice of the median ratio and the percentage to be applied for each county shall be given by the Department of Revenue to the chairman of the board of commissioners not later than April 15 of the year for which it is to be effective. Notice shall also be given at the same time to the public service companies whose property values are subject to adjustment under this section. Either the county or an affected public service company may challenge the real property ratio or the percentage established by the Department of Revenue by giving notice of exception within 30 days after the mailing of the Department's notice. Upon receipt of such notice of exception, the Department shall arrange a conference with the challenging party or parties to review the matter. Following the conference, the Department shall notify the challenging party or parties of its final determination in the matter. Either party may appeal the Department's determination to the Property Tax Commission by giving notice of appeal within 30 days after the mailing of the Department's decision. (1939, c. 310, s. 500; 1953, c. 970, s. 5; 1955, c. 1100, s. 2; 1959, c. 682; 1967, c. 892, s. 7; 1969, c. 945, s. 1; 1971, c. 806, s. 1; 1973, c. 695, s. 12; 1985, c. 601, s. 1; 1987 (Reg. Sess., 1988), c. 1052, s. 1.)

Editor's Note. — An amendment to this section, which would have added a new subsection (d), by Session Laws 1993, c. 497, s. 20, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

ARTICLE 14.

Time for Listing and Appraising Property for Taxation.

§ 105-285. Date as of which property is to be listed and appraised.

(a) Annual Listing Required. — All property subject to ad valorem taxation shall be listed annually.

(b) Personal Property; General Rule. — Except as otherwise provided in this Chapter, the value, ownership, and place of taxation of personal property, both tangible and intangible, shall be determined annually as of January 1.

(c) Repealed by Session Laws 1987, c. 813, s. 12, effective for taxable years beginning on or after January 1, 1988.

(d) Real Property. — The value of real property shall be determined as of January 1 of the years prescribed by G.S. 105-286 and

G.S. 105-287. The ownership of real property shall be determined annually as of January 1, except in the following situation: When any real property is acquired after January 1, but prior to July 1, and the property was not subject to taxation on January 1 on account of its exempt status, it shall be listed for taxation by the transferee as of the date of acquisition and shall be appraised in accordance with its true value as of January 1 preceding the date of acquisition; and the property shall be taxed for the fiscal year of the taxing unit beginning on July 1 of the year in which it is acquired. The person in whose name such property is listed shall have the right to appeal the listing, appraisal, and assessment of the property in the same manner as that provided for listings made as of January 1.

In the event real property exempt as of January 1 is, prior to July 1, acquired from a governmental unit that by contract is making payments in lieu of taxes to the taxing unit for the fiscal period beginning July 1 of the year in which the property is acquired, the tax on such property for the fiscal period beginning on July 1 immediately following acquisition shall be one half of the amount of the tax that would have been imposed if the property had been listed for taxation as of January 1. (1939, c. 310, s. 302; 1945, c. 973; 1971, c. 806, s. 1; 1973, c. 735; 1985, c. 656, s. 21; 1987, c. 813, s. 12; 1993, c. 485, s. 17.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "otherwise provided in this Chapter" for "provided in subsection (c) below" in subsection (b).

CASE NOTES

Effect of Listing on Ad Valorem Taxation. — The pivotal event in determining when a tax is incurred is the date that the property is listed by the owner thereof; the obligation to pay ad valorem property taxes in the State of North Carolina attaches at the time the property is listed, even though the amount of the tax has not yet been determined. Burns v. City of Winston-Salem, 991 F.2d 116 (4th Cir. 1993).

Applied in Computer Sales Int'l, Inc. v. Forsyth Mem. Hosp., 112 N.C. App. 633, 436 S.E.2d 263 (1993).

Cited in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993); County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 105-287. Changing appraised value of real property in years in which general reappraisal or horizontal adjustment is not made.

CASE NOTES

Failure to Appraise Property or to Bill Owners. — This section, prohibiting retroactive increases in appraised property values, did not operate to preclude county tax assessor from levying challenged tax in 1990 (based on property tax commission finding that assessor appraised the house at $0 in 1989), where the assessor, due to an administrative error, simply failed to appraise the house or to bill the owners in 1989 for the taxes owned thereon. In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

Quoted in Asheville Indus., Inc. v. City of Asheville, 112 N.C. App. 713, 436 S.E.2d 873 (1993).

ARTICLE 15.

Duties of Department and Property Tax Commission as to Assessments.

§ 105-288. Property Tax Commission.

CASE NOTES

Order Entered After Expiration of Chairman's Term. — Order entered on November 4, 1991 by chairman of county tax commission after his term had expired as a commissioner on the property tax commission and his successor to the commission had been appointed was not a valid and binding order because the chairman did not have the authority to enter an order after the expiration of his term on the commission. In re N. Telecom, Inc., 112 N.C. App. 215, 435 S.E.2d 367 (1993).

§ 105-289. Duties of Department of Revenue.

(a) It shall be the duty of the Department of Revenue:

(1) To discharge the duties prescribed by law and to enforce the provisions of this Subchapter.

(2) To exercise general and specific supervision over the valuation and taxation of property by taxing units throughout the State.

(3) To appraise the property of public service companies.

(4) To keep full and accurate records of the Commission's official proceedings.

(5) To prepare and distribute annually to each assessor a manual that establishes five expected net income per acre ranges for agricultural land, horticultural land, and forestland, and establishes a method for appraising nonproductive land as a percentage of the lowest use-value established for productive land. The high and low net income amount in each range may differ by no more than fifteen dollars ($15.00). The basis for establishing each range shall be soil productivity.

For agricultural land, the expected net income per acre ranges shall be based on the actual yields and prices of corn and soybeans over a period of at least the five previous years, and the actual fixed and variable costs, including an imputed management cost, incurred in growing corn and soybeans over the same period of time. The manual shall contain recommended adjustments to the net income per acre ranges for the growing of crops subject to acreage or poundage allotments.

Expected net income per acre ranges shall be similarly established for horticultural land and forestland, using typical horticultural or forest products in various growing regions of the State instead of corn and soybeans.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs

from the income requirement for other horticultural land, when evergreens are harvested from the land.

(b), (c) Repealed by Session Laws 1973, c. 476, s. 193.

(d) In exercising general and specific supervision over the valuation and taxation of property, the Department shall provide the following:

(1) A continuing program of education and training for local tax officials in the conduct of their duties;

(2) A program for testing the qualifications of an assessor and other persons engaged in the appraisal of property for a county or municipality;

(3) A certification program for an assessor and other persons engaged in the appraisal of property for a county or municipality; and

(4) Assistance to the county and/or the county attorney in developing the specifications for the proposed contract sent to the Department for review pursuant to G.S. 105-299.

The Department shall promulgate regulations to carry out its duties under this subsection.

(e) The Department of Revenue may furnish the following information to a local tax official:

(1) Information contained in a report to it or to any other State department; and

(2) Information the Department has in its possession that may assist a local tax official in securing complete tax listings, appraising or assessing taxable property, collecting taxes, or presenting information in administrative or judicial proceedings involving the listing, appraisal, or assessment of property.

A local tax official may use information obtained from the Department under this subsection only for the purposes stated in subdivision (2). A local tax official may not divulge or make public this information except as required in administrative or judicial proceedings under this Subchapter. A local tax official who makes improper use of or discloses information obtained from the Department under this subsection is punishable as provided in G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate.

The Department may not furnish information to a local tax official pursuant to this subsection unless it has obtained a written certification from the official stating that the official is familiar with the provisions of this subsection and G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate, and that information obtained from the Department under this subsection will be used only for the purposes stated in subdivision (2).

(f) To advise local tax officials of their duties concerning the listing, appraisal, and assessment of property and the levy and collection of property taxes.

(g) To see that proper proceedings are brought to enforce the statutes pertaining to taxation and the collection of penalties and liabilities imposed by law upon public officers, officers of corporations, and individuals who fail, refuse, or neglect to comply with the provisions of this Subchapter and other laws with respect to the taxation of property, and to call upon the Attorney General of this State or any prosecuting attorney of this State to assist in the execution of the powers conferred by the laws of this State with respect to the taxation of property.

(h) To make annual studies of the ratio of the appraised value of real property to its true value and to establish for each county the median ratio as determined by the studies for each calendar year. The studies for each calendar year shall be completed by April 15 of the following calendar year. The studies shall be conducted in accordance with generally accepted principles and procedures for sales assessment ratio studies.

(i) To maintain a register of appraisal firms, mapping firms and other persons or firms having expertise in one or more of the duties of the assessor; to review the qualifications and work of such persons or firms; and to advise county officials as to the professional and financial capabilities of such persons or firms to assist the assessor in carrying out his duties under this Subchapter. The register shall include a copy of the report filed by the counties pursuant to G.S. 105-322(g)(4). It shall also include the average median sales assessment ratio and the coefficient of dispersion achieved in each county for the first two years following the county's effective date of revaluation. To be registered with the Department of Revenue, such persons or firms shall annually file a report with the Department setting forth the following information:

(1) A statement of the firm's ownership,
(2) A statement of the firm's financial condition,
(3) A list of the firm's principal officers with a statement of their qualifications and experience,
(4) A list of the firm's employees with a statement of their education, training and experience, and
(5) A full and complete resume of each employee which the firm proposes to place in a supervisory position in any mapping or revaluation project for a county in this State. (1939, c. 310, s. 202; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, s. 1; 1971, c. 806, s. 1; 1973, c. 47, s. 2; c. 476, s. 193; 1975, c. 275, s. 9; c. 508, s. 1; 1981, c. 387, ss. 1, 2; 1983, c. 813, s. 1; 1985, c. 601, s. 3; c. 628, s. 3; 1987, c. 45, s. 1; c. 46, s. 1; c. 440, s. 1; c. 830, s. 84(a); 1987 (Reg. Sess., 1988), c. 1052, s. 1; 1989, c. 79, ss. 2, 4; c. 736, s. 3; 1991, c. 110, s. 2; 1993, c. 485, s. 35.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate" for "G.S. 105-259" in the first paragraph following subdivision (e)(2); and in the second paragraph following subdivision (e)(2) substituted "the official" for "he" preceding "is familiar with", and substituted "this subsection and G.S. 153A-148.1 or G.S. 160A-208.1, as appropriate" for "both this subsection and G.S. 105-259".

§ 105-290. Appeals to Property Tax Commission.

(a) Duty to Hear Appeals. — In its capacity as the State board of equalization and review, the Property Tax Commission shall hear and adjudicate appeals from boards of county commissioners and from county boards of equalization and review as provided in this section.

(b) Appeals from Appraisal and Listing Decisions. — The Property Tax Commission shall hear and decide appeals from decisions concerning the listing, appraisal, or assessment of property made by county boards of equalization and review and boards of county commissioners. Any property owner of the county may except to an order of the county board of equalization and review or the board of county commissioners concerning the listing, appraisal, or assessment of property and appeal the order to the Property Tax Commission.

(1) In these cases, taxpayers and persons having ownership interests in the property subject to taxation may file separate appeals or joint appeals at the election of one or more of the taxpayers. It is the intent of this provision that all owners of a single item of personal property or tract or parcel of real property be allowed to join in one appeal and also that any taxpayer be allowed to include in one appeal all objections timely presented regardless of the fact that the listing or valuation of more than one item of personal property or tract or parcel of real property is the subject of the appeal.

(2) When an appeal is filed, the Property Tax Commission shall provide a hearing before representatives of the Commission or the full Commission as specified in this subdivision.

a. Hearing by Commission Representatives. — The Commission may authorize one or more members of the Commission or employees of the Department of Revenue to hear an appeal, to make examinations and investigations, to have made from stenographic notes a full and complete record of the evidence offered at the hearing, and to make recommended findings of fact and conclusions of law. Should the Commission elect to follow this procedure, it shall fix the time and place at which its representatives will hear the appeal and, at least 10 days before the hearing, give written notice of the hearing to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission's representatives shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The representatives conducting the hearing shall submit to the Commission and to the appellant and appellee their recommended findings of fact and conclusions of law. Upon the request of any party, the representatives conducting the hearing shall also submit to the Commission and to the appellant and appellee a full record of the proceeding. The cost of providing the full record of the proceeding shall be borne by the party requesting it, unless the Commission determines for good cause that the cost should be borne by the Commission. The Commission shall review the record, the recommended findings of fact and conclusions of law, and any written arguments that may be submitted to the Commission by the appellant or appellee within 15 days following the date on which the findings and conclusions were submitted to the parties and shall take one of the following actions:

1. Accept the recommended findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.
2. Make new findings of fact or conclusions of law based upon the materials submitted by the Commission's representatives and issue an appropriate order as provided in subdivision (b)(3), below.
3. Rehear the appeal under the procedure provided in subdivision (b)(2)b, below, with respect to any portion of the record or recommended findings of fact or conclusions of law.

b. Hearing by Full Commission. — Should the Commission elect not to employ the procedure provided in subdivision (b)(2)a, above, it shall fix a time and place at which the Commission shall hear the appeal and, at least 10 days before the hearing, give written notice of the hearing to the appellant and to the clerk of the board of commissioners of the county from which the appeal is taken. At the hearing the Commission shall hear all evidence and affidavits offered by the appellant and appellee county and may exercise the authority granted by subsection (d), below, to obtain information pertinent to decision of the appeal. The Commission shall make findings of fact and conclusions of law and issue an appropriate order as provided in subdivision (b)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (b), the Property Tax Commission shall enter an order (incorporating the findings and conclusions) reducing, increasing, or confirming the valuation or valuations appealed or listing or removing from the tax lists the property whose listing has been appealed. A certified copy of the order shall be delivered to the appellant and to the clerk of the board of commissioners of the county from which the appeal was taken, and the abstracts and tax records of the county shall be corrected to reflect the Commission's order.

(c) Appeals from Adoption of Schedules, Standards, and Rules. — It shall be the duty of the Property Tax Commission to hear and to adjudicate appeals from orders of boards of county commissioners adopting schedules of values, standards, and rules under the provisions of G.S. 105-317 as prescribed in this subsection (c), and the adoption of such schedules, standards, and rules shall not be subject to appeal under any other provision of this Subchapter.

(1) A property owner of the county who, either separately or in conjunction with other property owners of the county, asserts that the schedules of values, standards, and rules adopted by order of the board of county commissioners do not meet the true value or present-use value appraisal standards established by G.S. 105-283 and G.S. 105-277.2(5), respectively, may appeal the order to the Property Tax Commission within 30 days of the date when the order adopting the schedules, standards, and rules was first published, as required by G.S. 105-317(c).

(2) Upon such an appeal the Property Tax Commission shall proceed to hear the appeal in accordance with the proce-

dures provided in subdivisions (b)(1) and (b)(2), above, and in scheduling the hearing upon such an appeal, the Commission shall give it priority over appeals that may be pending before the Commission under the provisions of subsection (b), above. The decision of the Commission upon such an appeal shall be embodied in an order as provided in subdivision (c)(3), below.

(3) On the basis of the findings of fact and conclusions of law made after any hearing provided for by this subsection (c), the Property Tax Commission shall enter an order (incorporating the findings and conclusions):

a. Modifying or confirming the order adopting the schedules, standards, and rules challenged, or

b. Requiring the board of county commissioners to revise or modify its order of adoption in accordance with the instructions of the Commission and to present the order as thus revised or modified for approval by the Commission under rules and regulations prescribed by the Commission.

(d) Witnesses and Documents. — Upon its own motion or upon the request of any party to an appeal, the Property Tax Commission, or any member of the Commission, or any employee of the Department of Revenue so authorized by the Commission shall examine witnesses under oath administered by any member of the Commission or any employee of the Department so authorized by the Commission, and examine the documents of any person if there is ground for believing that information contained in such documents is pertinent to the decision of any appeal pending before the Commission, regardless of whether such person is a party to the proceeding before the Commission. Witnesses and documents examined under the authority of this subsection (d) shall be examined only after service of a subpoena as provided in subdivision (d)(1), below. The travel expenses of any witness subpoenaed and the cost of serving any subpoena shall be borne by the party that requested the subpoena.

(1) The Property Tax Commission, a member of the Commission, or any employee of the Department of Revenue authorized by the Commission, is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the chairman of the Commission directed to the witness or witnesses or to the person or persons having custody of the documents sought. Subpoenas issued under this subdivision may be served by any officer authorized to serve subpoenas.

(2) **(Effective October 1, 1994 — See editor's note)** Any person who shall willfully fail or refuse to appear, to produce subpoenaed documents in response to a subpoena, or to testify as provided in this subsection (d) shall be guilty of a Class 1 misdemeanor.

(e) Time Limits for Appeals. — A notice of appeal from an order of a board of county commissioners, other than an order adopting a uniform schedule of values, or from a board of equalization and review shall be filed with the Property Tax Commission within 30 days after the date the board mailed a notice of its decision to the property owner. A notice of appeal from an order adopting a schedule of values shall be filed within the time set in subsection (c).

(f) Notice of Appeal. — A notice of appeal filed with the Property Tax Commission shall be in writing and shall state the grounds for the appeal. A property owner who files a notice of appeal shall send a copy of the notice to the appropriate county assessor.

(g) What Constitutes Filing. — A notice of appeal submitted to the Property Tax Commission by a means other than United States mail is considered to be filed on the date it is received in the office of the Commission. A notice of appeal submitted to the Property Tax Commission by United States mail is considered to be filed on the date shown on the postmark stamped by the United States Postal Service. If an appeal submitted by United States mail is not postmarked or the postmark does not show the date of mailing, the appeal is considered to be filed on the date it is received in the office of the Commission. A property owner who files an appeal with the Commission has the burden of proving that the appeal is timely. (1939, c. 310, ss. 202, 1107, 1109; 1955, c. 1350, s. 10; 1967, c. 1196, s. 3; 1969, c. 7, ss. 1, 2; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1987, c. 295, ss. 3, 9; c. 680, ss. 4, 5; 1989 (Reg. Sess., 1990), c. 1005, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 1016, s. 1; 1993, c. 539, s. 713; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (d)(2) substituted "Class 1 misdemeanor" for "misdemeanor and fined and/or imprisoned in the discretion of the court."

CASE NOTES

Jurisdiction Lacking. — Where County Tax Assessor attempted to appeal in his individual capacity a decision of the Board of Equalization and Review that he could not appeal in his official capacity as Tax Assessor he had no standing to appeal to the Property Tax Commission and the Commission had no jurisdiction to hear his appeal. In re Moses H. Cone Mem. Hosp., 113 N.C. App. 562, 439 S.E.2d 778 (1994).

Cited in In re N. Telecom, Inc., 112 N.C. App. 215, 435 S.E.2d 367 (1993).

§ 105-291. Powers of Department and Commission.

(a) General Powers. — The Department of Revenue is authorized to exercise all powers reasonably necessary to perform the duties imposed upon it by this Subchapter and other laws of this State.

(b) Rule-Making Power. — The Department may adopt such rules and regulations, not inconsistent with law, as the Department may deem necessary to perform the duties or responsibilities of this Chapter.

(c) General Investigatory Authority. — In exercising general and specific supervision over the valuation and taxation of property, the Department or any authorized deputy shall have power to examine witnesses under oath administered by any member or authorized deputy and to examine the documents of any State department, county, city, town, or taxpayer if there is ground for believing that the witnesses have or that the documents contain information pertinent to the subject of the Department's inquiry. Witnesses and documents examined under the authority of this subsection (c) may be obtained through service of subpoenas as provided in subdivision (c)(1), below.

(1) To obtain the testimony of witnesses or to obtain access to the documents enumerated in this subsection (c), the Department or any authorized deputy is authorized and empowered to subpoena witnesses and to subpoena documents upon a subpoena to be signed by the Secretary of Revenue directed to the witness or to the person having custody of the documents sought, and to be served by any officer authorized to serve subpoenas.

(2) **(Effective October 1, 1994 — See editor's note)** Any person who shall willfully fail or refuse to appear; to produce subpoenaed documents before the Department or authorized deputy in response to a subpoena; or to testify as provided in this subsection (c) shall be guilty of a Class 1 misdemeanor.

(d) Certification of Actions. — The Property Tax Commission shall have power to certify copies of its records, orders, and proceedings by attesting the copies with its official seal, and copies of records, orders, or proceedings so certified shall be received in evidence in all courts of this State with like effect as certified copies of other public records.

(e) Power to Require Reports. — In its discretion, the Department may require tax supervisors, clerks of boards of county commissioners, and county accountants to file with it, when called for, complete reports of the appraised and assessed value of all real and personal property in the counties, itemized as the Department may prescribe.

(f) Power to Prescribe Record Forms. — The Department may prescribe the forms, books, and records to be used in the listing, appraisal, and assessment of property and in the levying and collection of property taxes, and how the same shall be kept.

(g) Power to Recommend Appraisal Standards. — The Department may develop and recommend standards and rules to be used by tax supervisors and other responsible officials in the appraisal of specific kinds and categories of property for taxation. (1939, c. 310, s. 203; 1945, c. 955; 1951, c. 798; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 714; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (c)(2) substituted "Class 1 misdemeanor" for "misdemeanor and fined and/or imprisoned in the discretion of the court."

ARTICLE 16.

County Listing, Appraisal, and Assessing Officials.

§ 105-296. Powers and duties of assessor.

(a) The county assessor shall have general charge of the listing, appraisal, and assessment of all property in the county in accordance with the provisions of law. He shall perform the duties imposed upon him by law, and he shall have and exercise all powers reasonably necessary in the performance of his duties not inconsistent with the Constitution or the laws of this State.

(b) Within budgeted appropriations, he shall employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law. The assessor may allocate responsibility among such employees by territory, by subject matter, or on any other reasonable basis. Each person employed by the assessor as a real property appraiser or personal property appraiser shall during the first year of employment and at least every other year thereafter attend a course of instruction in his area of work. At the end of the first year of their employment, such persons shall also achieve a passing score on a comprehensive examination in property tax administration conducted by the Department of Revenue.

(c) At least 10 days before the date as of which property is to be listed, he shall advertise in a newspaper having general circulation in the county and post in at least five public places in each township in the county a notice containing at least the following:

(1) The date as of which property is to be listed.
(2) The date on which listing will begin.
(3) The date on which listing will end.
(4) The times between the date mentioned in subdivision (c)(2), above, and the date mentioned in subdivision (c)(3), above, during which lists will be accepted.
(5) The place or places at which lists will be accepted at the times established under subdivision (c)(4), above.
(6) A statement that all persons who, on the date as of which property is to be listed, own property subject to taxation must list such property within the period set forth in the notice and that any person who fails to do so will be subject to the penalties prescribed by law.

If the listing period is extended in any county by the board of county commissioners, the assessor shall advertise in the newspaper in which the original notice was published and post in the same places a notice of the extension and of the times during which and the place or places at which lists will be accepted during the extended period.

(d) through (f) Repealed by Session Laws 1987, c. 43, s. 2.

(g) **(Effective October 1, 1994 — See editor's note)** He shall have power to subpoena any person for examination under oath and to subpoena documents whenever he has reasonable grounds for the belief that such person has knowledge or that such documents contain information that is pertinent to the discovery or valuation of any property subject to taxation in the county or that is necessary for compliance with the requirements as to what the tax list shall contain. The subpoena shall be signed by the chairman of the board of equalization and review if that board is in session; otherwise, it shall be signed by the chairman of the board of county commissioners. It shall be served by an officer qualified to serve subpoenas. Any person who shall wilfully fail or refuse to appear, produce subpoenaed documents, or testify concerning the subject of the inquiry shall be guilty of a Class 1 misdemeanor.

(h) **(Effective October 1, 1994 — See editor's note)** Only after the abstract has been carefully reviewed can the assessor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of assets and liabilities, or other information secured by the assessor under the terms of this subsection, but not expressly required by this Subchapter to be shown on the abstract itself, shall not be open to public inspection but shall be made available, upon request, to representatives of the Department of Revenue or of the Employment Security Commission. Any assessor or other official or employee disclosing information so obtained, except as may be necessary in listing or appraising property in the performance of official duties, or in the administrative or judicial proceedings relating to listing, appraising, or other official duties, shall be guilty of a Class 3 misdemeanor and punishable only by a fine not exceeding fifty dollars ($50.00).

(i) Prior to the first meeting of the board of equalization and review, the assessor may, for good cause, change the appraisal of any property subject to assessment for the current year. Written notice of a change in assessment shall be given to the taxpayer at his last known address prior to the first meeting of the board of equalization and review.

(j) The assessor shall annually review one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor shall review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The assessor may require the owner of classified property to submit any information needed by the assessor to verify that the property continues to qualify for present-use value taxation.

(k) He shall furnish information to the Department of Revenue as required by the Department to conduct studies in accordance with G.S. 105-289(h).

(*l*) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. (1939, c. 310, ss. 403, 404; 1953, c. 970, s. 3; 1955, c. 1012, s. 1; 1957, c. 202; 1959, c. 740, s. 3; 1963, c. 302; 1971, c. 806, s. 1; 1973, c. 560; 1983, c. 813, s. 3; 1985, c. 518, s. 2; 1987, c. 43, s. 2; c. 45, ss. 1, 2; c. 830, s. 84(b); 1987 (Reg. Sess., 1988), c. 1044, s. 13; 1991, c. 34, s. 2; c. 77, s. 1; 1993, c. 539, ss. 715, 716; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (g) substituted "Class 1 misdemeanor" for "misdemeanor and fined and/or imprisoned in the discretion of the court" ; and in the last sentence of subsection (h) inserted "Class 3" preceding "misdemeanor" and inserted "only."

§ 105-299. Employment of experts.

CASE NOTES

Private Auditors. — The General Assembly had specifically authorized each county to employ private auditors, and a power incidental to that grant of authority is the power to decide the basis upon which the private auditors are to be employed. In re Philip Morris U.S.A, 335 N.C. 227, 436 S.E.2d 828 (1993), cert. denied, 335 N.C. 466, 441 S.E.2d 118 (1994).

Contingent fee contracts for private tax auditor's services are not contrary to public policy. In re Philip Morris U.S.A, 335 N.C. 227, 436 S.E.2d 828 (1993), cert. denied, 335 N.C. 466, 441 S.E.2d 118 (1994).

ARTICLE 17.

Administration of Listing.

§ 105-307. Length of listing period; extension; preliminary work.

CASE NOTES

Cited in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

§ 105-308. (Effective October 1, 1994 — See editor's note) Duty to list; penalty for failure.

Every person in whose name any property is to be listed under the terms of this Subchapter shall list the property with the assessor within the time allowed by law on an abstract setting forth the information required by this Subchapter.

In addition to all other penalties prescribed by law, any person whose duty it is to list any property who willfully fails or refuses to list the same within the time prescribed by law shall be guilty of a Class 2 misdemeanor. The failure to list shall be prima facie evidence that the failure was willful.

Any person who willfully attempts, or who willfully aids or abets any person to attempt, in any manner to evade or defeat the taxes imposed under this Subchapter, whether by removal or concealment of property or otherwise, shall be guilty of a Class 2 misdemeanor. (1939, c. 310, s. 901; 1957, c. 848; 1971, c. 806, s. 1; 1977, c.

92; 1987, c. 43, s. 4; c. 45, s. 1; 1993, c. 539, s. 717; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of the second paragraph substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months" and in the third paragraph substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months or by both such fine and imprisonment".

§ 105-309. What the abstract shall contain.

(a) Each person whose duty it is to list property for taxation shall file each year with the assessor a tax list or abstract showing, as of the date prescribed by G.S. 105-285(b), the information required by this section. Subject to the provisions of subdivisions (a)(1) and (a)(2), below, each person whose duty it is to list property for taxation shall file a separate abstract.

(1) Tenants by the entirety shall file a single abstract listing the real property so held, together with all personal property they own jointly.

(2) Tenants in common shall file a single abstract listing the real property so held, together with all personal property that they own jointly, unless, as provided in G.S. 105-302(c)(9), the assessor allows them to list their undivided interests in the real property on separate abstracts.

(b) Each abstract shall show the taxpayer's name; residence address; and, if required by the assessor, business address.

(1) An individual trading under a firm name shall show his name and address and also the name and address of his business firm.

(2) An unincorporated association shall show both the name and address of the association and the names and addresses of its principal officers.

(3) A partnership shall show both the name and address of the partnership and the names and addresses of its full partners.

(c) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:

(1) Real property not divided into lots shall be described by giving:

a. The township in which located.

b. The total number of acres in the tract, or, if smaller than one acre, the dimensions of the parcel.

c. The tract name (if any), the names of at least two adjoining landowners, a reference to the tract's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some other description sufficient to identify and locate the property by parol testimony.

d. If applicable, the number of acres of:
1. Cleared land;
2. Woods and timberland;
3. Land containing mineral or quarry deposits;
4. Land susceptible of development for waterpower;
5. Wasteland.

e. The portion of the tract or parcel located within the boundaries of any municipality.

(2) Real property divided into lots shall be described by giving:

a. The township in which located.

b. The dimensions of the lot.

c. The location of the lot, including its street number (if any).

d. The lot's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some description sufficient to identify and locate the property by parol testimony.

e. The portion of the lot located within the boundaries of any municipality.

(3) In conjunction with the listing of any real property under subdivisions (c)(1) and (c)(2), above, there shall be given a short description of any buildings and other improvements thereon that belong to the owner of the land.

(4) Buildings and other improvements having a value in excess of one hundred dollars ($100.00) that have been acquired, begun, erected, damaged, or destroyed since the time of the last appraisal of property shall be described.

(5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.

a. Buildings, other improvements, and separate rights owned by a taxpayer with respect to the lands of another shall be listed separately and identified so as to indicate the name of the owner thereof and the tract, parcel, or lot on which the buildings or other improvements are situated or to which the separate rights appertain.

b. In accordance with the provisions of G.S. 105-302(c)(11), buildings or other improvements or separate rights owned by a taxpayer with respect to the lands of another may be listed either in the name of the owner of the buildings, other improvements, or rights, or in the name of the owner of the land.

(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under Division IV of Article 4 of this Chapter.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, he may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information he may have with respect to the true value of the personal property he is required to list.

(e) At the end of the abstract each person whose duty it is to list property for taxation shall sign the affirmation required by G.S. 105-310.

(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

"PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first fifteen thousand dollars ($15,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed eleven thousand dollars ($11,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above eleven thousand dollars ($11,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15".

(g) Any person who fails to give the notice required by G.S. 105-309(f) shall not only be subject to loss of the exemption, but also to the penalties provided by G.S. 105-312, and also if willful to the penalty provided in G.S. 105-310. For the purpose of determining whether a penalty is levied, whenever a taxpayer has received an exemption under G.S. 105-277.1 for one taxable year but the property of taxpayer is not eligible for the exemption the next year, notice given of that fact to the assessor on or before April 15 shall be considered as timely filed. (1939, c. 310, s. 900; 1941, c. 221, s. 1; 1953, c. 970, s. 6; 1955, c. 34; 1971, c. 806, s. 1; 1973, c. 448, s. 2; c. 476, s. 193; 1975, c. 881, s. 3; 1977, c. 666, s. 2; 1979, c. 846, s. 2; 1981, c. 54, ss. 4-6; c. 1052, s. 1; 1985, c. 656, ss. 47, 51; 1985 (Reg.

Sess., 1986), c. 947, s. 9; c. 982, s. 23; 1987, c. 43, s. 6; c. 45, s. 1; 1993, c. 360, s. 2.)

Effect of Amendments. — The 1993 amendment, effective for taxes collected for taxable years beginning on or after July 1, 1994, in subsection (f) added "The notice shall read as follows:" at the end of the first paragraph; in the second paragraph, substituted "fifteen thousand dollars ($15,000)" for "twelve thousand dollars ($12,000)", substituted "appraised" for "assessed", substituted "a permanent residence" for "certain property", inserted "and occupied" preceding "by North Carolina residents", deleted "disposable" following "permanently disabled whose", substituted "Income means the owner's adjusted gross income as determined for federal income tax purposes, plus" for "The exclusion covers real property, or a mobile home, occupied by the owner as his permanent residence. Disposable income includes", substituted "ancestor" for "ancestors,", and substituted "descendant" for "descendants"; in the third paragraph, deleted "disposable" preceding "income", and substituted "exclusion" for "exemption" and made related changes.

§ 105-310. (Effective October 1, 1994 — See editor's note) Affirmation; penalty for false affirmation.

There shall be annexed to the abstract on which the taxpayer's property is listed the following affirmation, which shall be signed by an individual qualified under the provisions of G.S. 105-311:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this listing, including any accompanying statements, inventories, schedules, and other information, is true and complete. (If this affirmation is signed by an individual other than the taxpayer, he affirms that he is familiar with the extent and true value of all the taxpayer's property subject to taxation in this county and that his affirmation is based on all the information of which he has any knowledge.)

Any individual who willfully makes and subscribes an abstract listing required by this Subchapter which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor. (1939, c. 310, s. 902; 1971, c. 806, s. 1; 1993, c. 539, s. 718; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of the second paragraph substituted "Class 2 misdemeanor" for "misdemeanor and, upon conviction, shall be subject to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed 30 days, or both."

§ 105-312. Discovered property; appraisal; penalty.

CASE NOTES

Applied in In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

Cited in Kinro, Inc. v. Randolph County, 108 N.C. App. 334, 423 S.E.2d 513 (1992).

ARTICLE 18.

Reports in Aid of Listing.

§ 105-316.6. (Effective October 1, 1994 — See editor's note) Penalties for violations.

(a) Any person required by G.S. 105-316.1 through 105-316.8 to obtain a tax permit who fails to do so or who fails to properly display same shall be guilty of a Class 3 misdemeanor. This penalty shall be in addition to any penalties imposed for failure to list property for taxation and interest for failure to pay taxes provided by the general laws of this State.

(b) Any manufacturer or retailer of mobile homes who aids or abets any owner covered by G.S. 105-316.1 through 105-316.8 to defeat in any manner the purpose of G.S. 105-316.1 through 105-316.8 shall be guilty of a Class 3 misdemeanor.

(c) Any person who transports a mobile home from a location in this State for an owner other than a manufacturer or retailer of mobile homes without having properly displayed thereon the tax permit required by G.S. 105-316.1 through 105-316.8 shall be guilty of a Class 3 misdemeanor.

(d) Any law-enforcement officer of this State who apprehends any person violating the provisions of G.S. 105-316.1 through 105-316.8 shall detain such person and mobile home until satisfactory arrangements have been made to meet the requirements of G.S. 105-316.1 through 105-316.8. (1975, c. 881, s. 1; 1977, 2nd Sess., c. 1187, ss. 1, 4, 5; 1993, c. 539, s. 719; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor and, upon conviction, shall be subject to a fine not to exceed two hundred fifty dollars ($250.00) or imprisonment not to exceed 30 days, or both, in the discretion of the court" in subsections (a), (b), and (c).

ARTICLE 19.

Administration of Real and Personal Property Appraisal.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules.

CASE NOTES

Commission May Decline to Use Highest and Best Use Valuation. — There is no statutory proscription against the Tax Commission's declining to use the highest and best use valuation provided it has considered both the specifically enumerated factors of subsection (a) of this section and any other factors that may affect the land's value. In re Perry-Griffin Found., 108 N.C. App. 383, 424 S.E.2d 212 (1993).

Charitable Trusts. — Because of the valid and enforceable restraint on alienation, property of a charitable trust itself is unmarketable; therefore, to tax the property according to normal market assumptions would be unfair to the charitable trust and in doing so, would seriously erode and ultimately defeat the public policy of this State in favor of charitable trusts. In re Perry-Griffin Found., 108 N.C. App. 383, 424 S.E.2d 212 (1993).

§ 105-317.1. Appraisal of personal property; elements to be considered.

CASE NOTES

Cited in In re Philip Morris U.S.A, 335 N.C. 227, 436 S.E.2d 828 (1993).

ARTICLE 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

(a) Personnel. — Except as otherwise provided herein, the board of equalization and review of each county shall be composed of the members of the board of county commissioners.

Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board. The board of commissioners shall also designate the chairman of the special board. The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners. The resolution shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.

(b) Compensation. — The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. — Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. — The assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as he may have or can obtain with respect to the listing and valuation of taxable property in the county.

(e) Time of Meeting. — Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below.

(f) Notice of Meetings and Adjournment. — A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

(g)(1) Powers and Duties. — It shall be the duty of the board of equalization and review to examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.

b. Correct all errors in the names of persons and in the description of properties subject to taxation.

c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this Subchapter.

e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.

f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).

(2) On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on his appeal not later than 30 days after the board's adjournment.

(3) In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

b. **(Effective October 1, 1994 — See editor's note)** The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

(4) Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal. (1939, c. 310, s. 1105; 1965, c. 191; 1967, c.

1196, s. 6; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1977, c. 863; 1987, c. 45, s. 1; 1989, c. 79, s. 3; c. 176, s. 1; c. 196; 1991, c. 110, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 22; 1993, c. 539, s. 720; 1994, Ex. Sess., c. 24, s. 14(c).)

Local Modification. — Buncombe: 1981 (Reg. Sess., 1982), c. 1279; Catawba: 1973, c. 355; Craven: 1987 (Reg. Sess., 1988), c. 1008; Cumberland: 1987, c. 161; 1989, c. 605, ss. 1, 4(b); Durham: 1989, c. 541, s. 1; 1991 (Reg. Sess., 1992), c. 871, s. 3; Iredell: 1993 (Reg. Sess., 1994), c. 645, s. 1; Mecklenburg: 1981, c. 509.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the second paragraph of subdivision (g)(3)b substituted "Class 1 misdemeanor" for "misdemeanor and punished by a fine or by imprisonment or by both in the discretion of the court."

CASE NOTES

Cited in Kinro, Inc. v. Randolph County, 108 N.C. App. 334, 423 S.E.2d 513 (1992).

ARTICLE 22A.

Motor Vehicles.

§ 105-330.1. Classification of motor vehicles.

(a) Classification. — All motor vehicles other than the motor vehicles listed in subsection (b) of this section are designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. Classified motor vehicles shall be listed and assessed as provided in this Article and taxes on classified motor vehicles shall be collected as provided in this Article.

(b) Exceptions. — The following motor vehicles are not classified under subsection (a) of this section:

(1) Motor vehicles exempt from registration pursuant to G.S. 20-51.

(2) Manufactured homes, mobile classrooms, and mobile offices.

(3) Semitrailers or trailers registered on a multiyear basis.

(4) Motor vehicles owned or leased by a public service company and appraised under G.S. 105-335.

(5) "U-drive-it" passenger vehicles registered under G.S. 20-87(2). (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 3; 1993, c. 485, s. 18; c. 543, s. 4; 1993 (Reg. Sess., 1994), c. 745, s. 1.)

Editor's Note. —

This section was amended by Session Laws 1993, c. 485, s. 18, effective retroactively to January 1, 1993, and by Session Laws 1993, c. 543, s. 4, effective July 24, 1993. The amendment by c. 485 deleted the changes made by c. 543, and, therefore, the changes made by c. 543 were not effectuated. Subsequently, Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 1 repealed Session Laws 1993, c. 543, s. 4.

Effect of Amendments. —

Session Laws 1993, c. 485, s. 18, effective on and after January 1, 1993 added the subsection (a) designation; in subsection (a) added "Classification" at the beginning, substituted "vehicles other than the motor vehicles listed in subsection (b) of this section are" for "vehicles, except (i) motor vehicles exempt from registration pursuant to G.S. 20-51, (ii) manufactured homes, mobile classrooms, and mobile offices, (iii) semitrailers or trailers registered on a multiyear basis, and (iv) motor vehicles owned or leased by a public service company and appraised under G.S. 105-335, are hereby"; and added subsection (b).

Session Laws 1993, c. 543, s. 4, effective July 24, 1993, substituted "or trailers registered on a multiyear basis" for "registered on a multiyear basis under G.S. 20-88(c)" in this section as it read prior to amendment by Session Laws 1993, c. 485, s. 18. Subsequently, Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 1 repealed Session Laws 1993, c. 543, s. 4. The section is set out as amended by Session Laws 1993, c. 485, s. 18.

ARTICLE 23.

Public Service Companies.

§ 105-334. Duty to file report; penalty for failure to file.

(a) Every public service company, whether incorporated under the laws of this State or any other state or any foreign nation, whose property is subject to taxation in this State, shall prepare and deliver to the Department of Revenue each year a report showing (as of January 1) such information with regard to the property it owns and the system property it leases as the Department of Revenue may by regulation prescribe. This report shall be filed on or before the last day of March, and the following affirmation, which shall be annexed to the report, shall be signed by a principal officer of the public service company making the report:

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this report, including any accompanying statements, inventories, schedules, and other information is true and complete.

(b) **(Effective October 1, 1994 — See editor's note)** Any individual who willfully subscribes a report required by this section which he does not believe to be true and correct as to every material matter shall be guilty of a Class 2 misdemeanor.

(c) For good cause the Department may grant reasonable extensions of time for filing the required reports.

(d) The Department may require any additional reports or information it deems necessary to properly carry out its duties under this Article.

(e) The provisions of G.S. 105-291 and 105-312 are made specifically applicable to all proceedings taken under this Article. (1939, c. 310, ss. 1600-1606; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 721; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and, upon conviction, shall be subject to a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six months" in subsection (b).

ARTICLE 24.

Review and Enforcement of Orders.

§ 105-345.2. Record on appeal; extent of review.

CASE NOTES

Applied in In re Lee Memory Gardens, Inc., 110 N.C. App. 541, 430 S.E.2d 451 (1993).

Quoted in In re Lee Memory Gardens, Inc., 110 N.C. App. 541, 430 S.E.2d 451 (1993); In re Cone Mills Corp., 112 N.C. App. 539, 435 S.E.2d 835 (1993).

Stated in In re Atl. Coast Conference, 112 N.C. App. 1, 434 S.E.2d 865 (1993).

ARTICLE 26.

Collection and Foreclosure of Taxes.

§ 105-352. Delivery of tax receipts to tax collector; prerequisites; procedure upon default.

(a) Time of Delivery. — As provided in G.S. 105-321, upon order of the governing body, the tax receipts shall be delivered to the tax collector on or before the first day of September.

(b) Settlement, Bond, and Prepayments. — Before the tax receipts for the current year are delivered to the tax collector, he shall have:

(1) Delivered to the chief accounting officer of the taxing unit the duplicate receipts issued for prepayments received by the tax collector.

(2) Demonstrated to the satisfaction of the chief accounting officer that all moneys received by the tax collector as prepayments have been deposited to the credit of the taxing unit.

(3) Made his annual settlement (as defined in G.S. 105-373) for all taxes in his hands for collection.

(4) Provided bond or bonds as required by G.S. 105-349(c) for taxes for the current year and all prior years in his hands for collection. (In no event shall the governing body accept a bond of lesser amount than that prescribed by any local act applying to the taxing unit.)

In the event prepayments have been received by a person other than the regular tax collector, that person shall, before the tax receipts are delivered to the tax collector, deliver the prepayment receipt duplicates to the chief accounting officer and demonstrate to the satisfaction of that officer that all moneys received by him as prepayments have been deposited to the credit of the taxing unit. If the chief accounting officer has accepted prepayments, he shall not later than the day on which the tax receipts are delivered to the tax collector, make settlement with the governing body in such manner and form as the governing body may prescribe.

(c) Procedure upon Default. — If, when the tax receipts for the current year have been computed and prepared, the regular tax collector shall not have met the requirements of subsection (b), above, the governing body shall immediately appoint a special tax collector and, after he has given satisfactory bond for the full amount of the taxes as required by G.S. 105-349(c), deliver to him the tax receipts for the current year and order him to make collections as provided in G.S. 105-321. In the discretion of the governing body, the cost of the special tax collector's bond and compensation may be deducted from the compensation of the regular tax collector. If the regular tax collector shall thereafter meet the requirements of subsection (b), above, the special collector shall make full settlement (in the manner provided in G.S. 105-373 for tax collectors retiring from office), and the governing body, as provided in G.S. 105-321, shall deliver the tax receipts for the current year to the regular tax collector and order their collection.

(d) **(Effective October 1, 1994 — See editor's note)** Civil and Criminal Penalties. —

(1) Any member of the governing body who shall vote to deliver the tax receipts to a tax collector before the tax collector has met the requirements prescribed by this section shall be individually liable for the amount of taxes charged against the tax collector for which he has not made satisfactory settlement; and any member of the governing body who so votes, or who willfully fails to perform any duty imposed by this section, shall be guilty of a Class 1 misdemeanor.

(2) Any tax collector or other official who fails to account for prepayments as prescribed by this section shall be guilty of a Class 1 misdemeanor. (1939, c. 310, s. 1707; 1971, c. 806, s. 1; 1993, c. 539, s. 722; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivisions (d)(1) and (d)(2) substituted "Class 1 misdemeanor" for "misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court."

§ 105-355. Creation of tax lien; date as of which lien attaches.

CASE NOTES

Taxes Owed on Due Parcel Not a Lien on Another Parcel. — Taxes owed on Parcel A are not a lien on taxpayer's Parcel B in the same county. Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

The pivotal event in determining when a tax is incurred is the date that the property is listed by the owner thereof; the obligation to pay ad valorem property taxes in the State of North Carolina attaches at the time the property is listed, even though the amount of the tax has not yet been determined. Burns v. City of Winston-Salem, 991 F.2d 116 (4th Cir. 1993).

Cited in County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 105-356. Priority of tax liens.

CASE NOTES

A local ad valorem tax lien is superior to all other liens, including State tax liens. County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994).

§ 105-359. Prepayments.

(a) To Whom Made. — Payments of taxes made before the tax receipts have been delivered to the tax collector, herein referred to as prepayments, shall be made to the regular tax collector unless the governing body shall have designated some other person to receive them. The regular tax collector or person named to receive prepayments shall give bond satisfactory to the governing body.

(b) When Accepted. — No taxing unit shall be required to accept any tender of prepayment until the annual budget estimate has been filed as required by law.

(c) Estimation of Liability; Overpayment and Underpayment. — If the tax rate has not been finally fixed or if the assessed valuation of the taxpayer's property has not been finally determined at the time a prepayment is tendered, the tax collector shall compute the amount of the tax liability on the basis of the best information available to him. If it is later ascertained that there has been an overpayment, the excess (without interest) shall be refunded by the taxing unit. If it is later ascertained that there was an underpayment, the unpaid balance of the tax shall be due, and the balance due shall be allowed the discount or charged the interest in effect with respect to taxes for the same year at the time the balance is paid.

(d) Receipts. — A receipt issued for a prepayment made on the basis of an estimate of the tax rate or assessed valuation shall so state, and such a receipt shall not release property from the tax lien created by G.S. 105-355(a). An official and final receipt shall be made available to the taxpayer as soon as possible after determination that the tax has been fully paid.

(e) **(Effective October 1, 1994 — See editor's note)** Duties of Chief Accounting Officer. — It shall be the duty of the chief accounting officer of the taxing unit to:

(1) Secure and retain in his office, available to taxpayers upon request, the official receipts for taxes paid in full by prepayment.
(2) Credit on the tax receipts to be delivered to the tax collector all taxes that have been paid in full or in part by prepayment.
(3) Prepare and deliver refunds for overpayments made by way of prepayment.
(4) Reduce the charge to be made against the tax collector by deducting from the total amount of taxes levied so much of the amount received as prepayments as is not required to be refunded under the provisions of subsection (c), above.

Any chief accounting officer who fails to perform the duties imposed upon him by this subsection (e) shall be guilty of a Class 1 misdemeanor. (1939, c. 310, ss. 1706, 1707; 1969, c. 921, s. 2; 1971, c. 806, s. 1; 1993, c. 539, s. 723; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (e) substituted "Class 1 misdemeanor" for "misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court."

§ 105-362. Discharge of lien on real property.

CASE NOTES

Cancellation of Liens on Specific Parcels. — When taxes are owed on several parcels of real estate in a county, an interested party may pay the taxes owed on one parcel and cancel the tax lien on that parcel. Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

Any time before the taxes have been reduced to a judgment, one may pay the real property taxes accrued on a specific parcel, with a pro-rata portion of any personal property taxes and advertising expenses, and have that parcel released from all tax liens. Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

§ 105-368. Procedure for attachment and garnishment.

(a) Subject to the provisions of G.S. 105-356 governing the priority of the lien acquired, the tax collector may attach wages and other compensation, rents, bank deposits, the proceeds of property subject to levy, or any other intangible personal property, including property held in the Escheat Fund, in the circumstances and to the extent prescribed in G.S. 105-366(b), (c), and (d).

In the case of property due the taxpayer or to become due to him within the current calendar year, the person owing the property to the taxpayer or having the property in his possession shall be liable for the taxes to the extent of the amount he owes or has in his possession. However, when wages or other compensation for personal services is attached, the garnishee shall not pay to the tax collector more than ten percent (10%) of such compensation for any one pay period.

(b) To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts or other property sought to be attached a notice as provided by this subsection. The notice may be personally served by any deputy or employee of the tax collector or by any officer having authority to serve summonses, or may be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The notice shall contain:

(1) The name of the taxpayer, and if known his Social Security number or federal tax identification number and his address.

(2) The amount of the taxes, penalties, interest, and costs (including the fees allowed by this section) and the year or years for which the taxes were imposed.

(3) The name of the taxing unit or units by which the taxes were levied.

(4) A brief description of the property sought to be attached.

(5) A copy of the applicable law, that is, G.S. 105-366 and 105-368. Notices concerning two or more taxpayers may be combined if they are to be served upon the same garnishee, but the taxes, penalties, interest, and costs charged against each taxpayer must be set forth separately.

(c) If the garnishee has no defense to offer or no setoff against the taxpayer, he shall within 10 days after service of the notice answer it by sending to the tax collector by registered or certified mail a statement to that effect, and if the amount demanded by the tax collector is then due to the taxpayer or subject to his demand, the garnishee shall remit it to the tax collector with his statement; but if the amount due to the taxpayer or subject to his demand is to mature in the future, the garnishee's statement shall set forth that fact, and the demand shall be paid to the tax collector upon maturity. Any payment by the garnishee under the provisions of this subsection (c) shall completely satisfy any liability therefor on his part to the taxpayer.

(d) If the garnishee has a defense or setoff against the taxpayer, he shall state it in writing under oath, and, within 10 days after service of the garnishment notice, he shall send two copies of his statement to the tax collector by registered or certified mail. If the tax collector admits the defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of the garnishee's statement, and the attachment or garnishment shall thereupon be discharged to the amount required by the defense or setoff, and any amount attached or garnished which is not affected by the defense or setoff shall be remitted to the tax collector as provided in subsection (c), above.

If the tax collector does not admit the defense or setoff, he shall set forth in writing his objections thereto and send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time the tax collector shall file a copy of the notice of garnishment, a copy of the garnishee's statement, and a copy of the tax collector's objections thereto in the appropriate division of the General Court of Justice of the county in which the garnishee resides or does business, where the issues made shall be tried as in civil actions.

(e) If the garnishee has not responded to the notice of garnishment as required by subsections (c) and (d), above, within 15 days after service of the notice, the tax collector may file in the appropriate division of the General Court of Justice of the county in which the garnishee resides a copy of the notice of garnishment, accompanied by a written statement that the garnishee has not responded thereto and a request for judgment, and the issues shall be tried as in civil actions.

(f) The taxpayer may raise any defenses to the attachment or garnishment that he may have in the manner provided in subsection (d), above, for the garnishee.

(g) The fee for serving a notice of garnishment shall be the same as that charged in a civil action. If judgment is entered in favor of the taxing unit by default or after hearing, the garnishee shall become liable for the taxes, penalties, and interest due by the taxpayer, plus the fees and costs of the action, but payment shall not be required from amounts which are not to become due to the taxpayer until they actually come due. The garnishee may satisfy the judgment upon paying the amount thereof, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered, either the taxing unit or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of the taxes, penalties, interest, and costs, the tax collector may release the attachment or garnishment, or execution may be stayed at the request of the tax collector pending appeal, but the final judgment shall be paid or enforced as above provided. If judgment is rendered against the taxing unit, it shall pay the fees and costs of the action. All fees collected by officers shall be disposed of in the same manner as other fees collected by such officers.

(h) Tax collectors may proceed against the wages, salary, or other compensation of officials and employees of this State and its agencies, instrumentalities, and political subdivisions in the manner provided in this section. If the taxpayer is an employee of the State, the notice of attachment shall be served upon him and upon the head or chief fiscal officer of the department, agency, instrumentality, or institution by which he is employed. If the taxpayer is an employee of a political subdivision of the State (county, municipality, etc.), the notice of attachment shall be served upon him and upon the officer charged with making up the payrolls of the political subdivision by which he is employed. All deductions from the wages or salary of a taxpayer made pursuant to this subsection (h) and remitted to the tax collector shall, pro tanto, constitute a satisfaction of the salary or wages due the taxpayer.

(i) **(Effective October 1, 1994 — See editor's note)** (1) Any person who, after written demand therefor, refuses to give the tax collector or assessor a list of the names and addresses of all of his employees who may be liable for taxes, shall be guilty of a Class 1 misdemeanor.

(2) Any tax collector or assessor who receives, upon his written demand, any list of employees may not release or furnish that list or any copy thereof, or disclose any name or information thereon, to any other person, and may not use that list in any manner or for any purpose not directly related

to and in furtherance of the collection and foreclosure of taxes. Any tax collector or assessor who violates or allows the violation of this subdivision (i)(2) shall be guilty of a Class 1 misdemeanor. (1939, c. 310, s. 1713; 1951, c. 1141, s. 1; 1955, cc. 1263, 1264; 1957, c. 1414, ss. 2-4; 1969, c. 305; c. 1029, s. 1; 1971, c. 806, s. 1; 1979, c. 103, ss. 3, 4; 1979, 2nd Sess., c. 1085, s. 2; 1981, c. 76, s. 1; 1987, c. 45, s. 1; 1989, c. 580, s. 2; 1993, c. 539, s. 724; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (i)(1) and in the the last sentence of subdivision (i)(2) inserted "Class 1" preceding "misdemeanor."

§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of unpaid Taxes that are Liens on Real Property. — On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property, and the governing body shall thereupon order the tax collector to advertise such tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(c) Time and Contents of Advertisement. — The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. (If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is permitted.)

The posted notice and newspaper advertisement shall set forth the following information:

(1) The name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, together with a brief description of each parcel of land to which such

a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

Failure to comply with this subsection does not affect the validity of the taxes or tax liens.

(d) Costs. — Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this subdivision (d) shall be deemed to be taxes.

(e) Payments during Advertising Period. — At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but if he fails to do so he shall not be liable for his failure to make the deletion.

(f) Listing and Advertising in Wrong Name. — No tax lien shall be void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) **(Effective October 1, 1994 — See editor's note)** Wrongful Advertisement. — Any tax collector or deputy tax collector who shall willfully advertise any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid shall be guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence. (1939, c. 310, s. 1715; 1955, c. 993; 1971, c. 806, s. 1; 1983, c. 808, s. 1; 1983 (Reg. Sess., 1984), c. 1013; 1993, c. 539, s. 725; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (g) substituted "Class 3 misdemeanor" for "misdemeanor and upon conviction shall be fined not more than five hundred dollars ($500.00) or imprisoned for not more than 30 days, or both".

CASE NOTES

Judgment Is Lien on All Property Owned by Debtor. — A judgment for taxes is a lien on all of the property owned by the judgment debtor in the county. Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

Cancellation of Lien on Specific Parcel. — Any time before the taxes have been reduced to a judgment, one may pay the real property taxes accrued on a specific parcel, with a pro-rata portion of any personal property taxes and advertising expenses, and have that parcel released from all tax liens. Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

§ 105-373. Settlements.

(a) Annual Settlement of Tax Collector. —

(1) Preliminary Report. — After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make a sworn report to the governing body of the taxing unit showing:

a. A list of the persons owning real property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person; and

b. A list of the persons not owning real property whose personal property taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. (To this list the tax collector shall append his statement under oath that he has made diligent efforts to collect the taxes due from the persons listed out of their personal property and by other means available to him for collection, and he shall report such other information concerning these taxpayers as may be of interest to or required by the governing body, including a report of his efforts to make collection outside the taxing unit under the provisions of G.S. 105-364.)

The governing body of the taxing unit may publish this list in any newspaper in the taxing unit. The cost of publishing this list shall be paid by the taxing unit.

(2) Insolvents. — Upon receiving the report required by subdivision (a)(1), above the governing body of the taxing unit shall enter upon its minutes the names of persons owing taxes (but who listed no real property) whom it finds to be insolvent, and it shall by resolution designate the list entered in its minutes as the insolvent list to be credited to the tax collector in his settlement.

(3) Settlement for Current Taxes. — After July 1 and before he is charged with taxes for the current fiscal year, the tax collector shall make full settlement with the governing body of the taxing unit for all taxes in his hands for collection for the preceding fiscal year. In the settlement the tax collector shall be charged with:

a. The total amount of all taxes in his hands for collection for the year, including amounts originally charged to him and all amounts subsequently charged on account of discoveries;

b. All penalties, interest, and costs collected by him in connection with taxes for the current year; and

c. All other sums collected by him.

The tax collector shall be credited with:

a. All sums representing taxes for the year deposited by him to the credit of the taxing unit or receipted for by a proper official of the unit;
b. Releases duly allowed by the governing body;
c. The principal amount of taxes constituting liens on real property;
d. The principal amount of taxes included in the insolvent list determined in accordance with subdivision (a)(2), above;
e. Discounts allowed by law; and
f. Commissions (if any) lawfully payable to the tax collector as compensation.

The tax collector shall be liable on his bond for both honesty and faithful performance of duty; for any deficiencies; and, in addition, for all criminal penalties provided by law.

The settlement, together with the action of the governing body with respect thereto, shall be entered in full upon the minutes of the governing body.

(4) Disposition of Tax Receipts after Settlement. — Uncollected taxes allowed as credits in the settlement prescribed in subdivision (a)(3), above, whether represented by tax liens held by the taxing unit or included in the list of insolvents, shall, for purposes of collection, be recharged to the tax collector or charged to some other person designated by the governing body of the taxing unit under statutory authority. The person charged with uncollected taxes shall:

a. Give bond satisfactory to the governing body;
b. Receive the tax receipts and tax records representing the uncollected taxes;
c. Have and exercise all powers and duties conferred or imposed by law upon tax collectors; and
d. Receive compensation as determined by the governing body.

(b) Settlements for Delinquent Taxes. — Annually, at the time prescribed for the settlement provided in subdivision (a)(3), above, all persons having in their hands for collection any taxes for years prior to the year involved in the settlement shall settle with the governing body of the taxing unit for collections made on each such year's taxes. The settlement for the taxes for prior years shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(c) Settlement at End of Term. — Whenever any tax collector fails to succeed himself at the end of his term of office, he shall, on the last business day of his term, make full and complete settlement for all taxes (current or delinquent) in his hands and deliver the tax records, tax receipts, tax sale certificates, and accounts to his successor in office. The settlement shall be made in whatever form is satisfactory to the chief accounting officer and the governing body of the taxing unit, and it shall be entered in full upon the minutes of the governing body.

(d) Settlement upon Vacancy during Term. — When a tax collector voluntarily resigns, he shall, upon his last day in office, make full settlement (in the manner provided in subsection (c), above) for all taxes in his hands for collection. In default of such a settlement, or in case of a vacancy occurring during a term for any reason, it shall be the duty of the chief accounting officer or, in the discretion of the governing body, of some other qualified person appointed by it immediately to prepare and submit to the governing body a report in the nature of a settlement made on behalf of the former tax collector. The report, together with the governing body's action with respect thereto, shall be entered in full upon the minutes of the governing body. Whenever a settlement must be made in behalf of a former tax collector, as provided in this subsection (d), the governing body may deliver the tax receipts, tax records, and tax sale certificates to a successor collector immediately upon the occurrence of the vacancy, or it may make whatever temporary arrangements for the collection of taxes as may be expedient, but in no event shall any person be permitted to collect taxes until he has given bond satisfactory to the governing body.

(e) Effect of Approval of Settlement. — Approval of any settlement by the governing body does not relieve the tax collector or his bondsmen of liability for any shortage actually existing at the time of the settlement and thereafter discovered; nor does it relieve the collector of any criminal liability.

(f) **(Effective October 1, 1994 — See editor's note)** Penalties. — In addition to any other civil or criminal penalties provided by law, any member of a governing body of a taxing unit, tax collector, or chief accounting officer who fails to perform any duty imposed upon him by this section shall be guilty of a Class 1 misdemeanor.

(g) Relief from Collecting Insolvents. — The governing body of any taxing unit may, in its discretion, relieve the tax collector of the charge of taxes owed by persons on the insolvent list that are five or more years past due when it appears to the governing body that such taxes are uncollectible.

(h) Relief from Collecting Taxes on Classified Motor Vehicles. The board of county commissioners may, in its discretion, relieve the tax collector of the charge of taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) that are one year or more past due when it appears to the board that the taxes are uncollectible. This relief, when granted, shall include municipal and special district taxes charged to the collector. (1939, c. 310, s. 1719; 1945, c. 635; 1947, c. 484, ss. 3, 4; 1951, c. 300, s. 1; c. 1036, s. 1; 1953, c. 176, s. 2; 1955, c. 908; 1967, c. 705, s. 1; 1971, c. 806, s. 1; 1983, c. 670, s. 22; c. 808, ss. 5-7; 1987, c. 16; 1991, c. 624, s. 3; 1991 (Reg. Sess., 1992), c. 961, s. 10; 1993, c. 539, s. 726; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (f) substituted "Class 1 misdemeanor" for "misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court."

ARTICLE 27.

Refunds and Remedies.

§ 105-381. Taxpayer's remedies.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Party Seeking Relief Under (c)(2) Must Assert Valid Defense. — A party seeking relief under subdivision (c)(2) of this section must assert a valid defense, as that term is defined in subdivision (a)(1) of this section, in their initial statement to the governing body of the taxing unit as a prerequisite to the later filing of a civil action. Kinro, Inc. v. Randolph County, 108 N.C. App. 334, 423 S.E.2d 513 (1992).

ARTICLE 28.

Special Duties to Pay Taxes.

§ 105-386. Tax paid by holder of lien; remedy.

CASE NOTES

Stated in Goldsboro Milling Co. v. Reaves, 804 F. Supp. 762 (E.D.N.C. 1991).

ARTICLE 30.

General Provisions.

§ 105-394. Immaterial irregularities.

CASE NOTES

Clerical error by a tax supervisor's office, etc. —
The failure by a county tax assessor due to an administrative error to include on homeowner's tax bill an assessment for the improvements to the lot was an immaterial irregularity and did not, contrary to the homeowner's contention, invalidate the tax owed on the house. In re Dickey, 110 N.C. App. 823, 431 S.E.2d 203 (1993).

§ 105-395. Application and effective date of Subchapter.

(a) The provisions of G.S. 105-333 through 105-344 (being Article 23 in this Subchapter) shall first be applicable to public service company property to be listed or reported for taxation as of January 1, 1972. Unless otherwise specifically provided herein, all other provisions of this Machinery Act (being Subchapter II of Chapter

105 of the General Statutes) shall become effective July 1, 1971, and shall apply to all taxes due and uncollected as of that date as well as to those that shall become due thereafter.

(b) Foreclosure actions commenced under either former G.S. 105-391 or former G.S. 105-414 (as codified in 1965 Replacement Volume 2D of the General Statutes and the 1969 Cumulative Supplement thereto) that have not been completed as of July 1, 1971, shall thereafter be prosecuted in accordance with the provisions of G.S. 105-374 herein. Foreclosure actions commenced under former G.S. 105-392 (as codified in 1965 Replacement Volume 2D of the General Statutes) that have not been completed as of July 1, 1971, shall thereafter be prosecuted in accordance with the provisions of G.S. 105-375 herein.

(c) It is the intent of the General Assembly to make the provisions of this Subchapter uniformly applicable throughout the State, and to assure this objective all laws and clauses of laws, including private and local acts, other than local acts relating to the selection of tax collectors, in conflict with this Subchapter are repealed effective July 1, 1971. As used in this section, the term "local acts" means any acts of the General Assembly that apply to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties. (1971, c. 806, s. 1; 1993, c. 485, s. 19.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, in subsection (c) deleted "(being G.S. 105-291 [105-271] through 105-395, inclusive)", substituted "acts, other than" for "acts (except" preceding "local acts relating to", and substituted "collectors, in conflict with this Subchapter are repealed effective July 1, 1971" for "collectors), in conflict with the provisions of this Subchapter, shall, as of July 1, 1971, be and are hereby repealed".

SUBCHAPTER V. GASOLINE TAX.

ARTICLE 36.

Gasoline Tax.

§ 105-430. Definitions.

The following definitions apply in this Article:

(01) Bulk plant. — A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(02) Reserved.

(03) Destination state. — The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(1) Distributor. — A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.

(2) Export. — To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered

out-of-state by or for the purchaser constitutes an export by the purchaser.

(3) Import. — To do either of the following:

a. Bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a motor vehicle.

b. Exchange motor fuel located at a pipeline terminal or a seaport terminal in this State for motor fuel located inside or outside the State.

In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of- state by or for the purchaser constitutes an import by the purchaser.

(4) Motor fuel. — Any of the following:

a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classification or uses.

b. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term 'motor fuel' shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine per centum (9%) at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(5) Person. — Defined in G.S. 105-228.90.

(5a) Reserved.

(5b) Rack. — A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck, or another means of nonbulk transfer.

(6) Secretary. — The Secretary of Revenue.

(7) Terminal. — A motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(8) Terminal operator. — A person who owns, operates, or otherwise controls a terminal.

(9) Transport truck. — A semitrailer combination rig designed or used to transport loads of at least 4,200 gallons of motor fuel over the highways. (1927, c. 93, s. 1; 1931, c. 145, s. 24; 1941, c. 376, s. 1; 1991, c. 441, s. 1; 1991 (Reg. Sess., 1992),

c. 913, s. 1; 1993, c. 354, s. 24; 1993 (Reg. Sess., 1994), c. 726, s. 1.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, substituted "Defined in G.S 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit" in subdivision (5).

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, added subdivisions (01), (02), (03), (5a), (5b), (6), (7), (8), and (9); added the last sentence of subdivision (2); substituted "any means of conveyance other than in the fuel supply tank of a motor vehicle" for "pipeline, marine vessel, railroad tank car, or transport truck" in subdivision (3)a.; and added the last sentence of subdivision (3).

§ 105-432.1. Application for registration as terminal operator.

A person may not engage in business in this State as a terminal operator unless the person is licensed under this Article as a distributor, is licensed under Article 36A of this Chapter as a supplier, or is registered as a terminal operator with the Secretary. To register as a terminal operator, a person must complete an application for registration provided by the Secretary and provide the information that would be required if the person filed an application for a license as a distributor.

A terminal operator must display a copy of a registration issued under this section in a conspicuous place at each place of business of the terminal operator. A terminal operator's registration is not transferable and remains in effect until surrendered or cancelled. (1993 (Reg. Sess., 1994), c. 726, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 726, s. 11, made this section effective January 1, 1995.

§ 105-433. Application for license as distributor; bond or letter of credit required.

(a) Application. — Every distributor shall obtain a license from the Secretary. To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(b) Bond. — Each applicant for a distributor's license must file with the Secretary of Revenue a bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of credit shall be two times the following, subject to the maximum and minimum amounts set in this subsection:

(1) For an applicant who intends to import motor fuel, the average monthly amount of tax for which the applicant would be liable under this Article, if the applicant's sale of imported motor fuel to a distributor were subject to the tax imposed by this Article, plus the applicant's average expected monthly tax liability under this Article.

(2) For an applicant who does not intend to import fuel, the applicant's average expected monthly tax liability under this Article.

The Secretary shall determine the average monthly amount of tax for which an applicant who imports fuel would be subject and the average expected monthly tax liability of an applicant. The amount of a bond or an irrevocable letter of credit may not exceed one hundred twenty-five thousand dollars ($125,000) and may not be less than two thousand dollars ($2,000).

An applicant who is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.5 as a supplier of special fuels may file a single bond or irrevocable letter of credit under either this section or G.S. 105-449.5 for the combined amount. A bond filed under this section shall be conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter, shall be payable to the State, and shall be in the form required by the Secretary of Revenue.

After filing a bond or an irrevocable letter of credit with an application for a distributor's license, a distributor shall, within 30 days after receiving a notice from the Secretary of Revenue, file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the distributor, however, may not exceed the limits set in this subsection.

(c) Issuance. — The Secretary of Revenue shall issue a distributor's license to an applicant who meets the requirements of this section and shall issue a duplicate copy of the license for each place of business of the distributor. A distributor shall display a license issued under this section in a conspicuous place at each place of business of the distributor. A distributor's license is not transferable and remains in effect until surrendered or cancelled.

(d) Export Exception. — A distributor who meets the following restrictions is not required to be incorporated or formed in this State, authorized to transact business in this State, or have a designated agent for service of process in this State:

(1) The distributor's sale or other distribution of motor fuel consists only of exporting the motor fuel.

(2) The distributor is licensed for motor fuel tax purposes in each state to which the distributor exports motor fuel. (1927, c. 93, s. 3; 1931, c. 145, s. 24; 1973, c. 476, s. 193; 1983, c. 220, s. 2; 1985 (Reg. Sess., 1986), c. 937, s. 5; 1989 (Reg. Sess., 1990), c. 908, s. 1; 1991, c. 42, s. 1; c. 441, s. 2; 1993, c. 354, s. 25; 1993 (Reg. Sess., 1994), c. 726, s. 3.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, in subsection (a), in the first sentence substituted "Secretary" for "Secretary of Revenue"; in the second sentence deleted "of Revenue" following "Secretary"; in the third sentence substituted "Secretary" for "Secretary of Revenue"; and added the present fifth sentence.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, substituted "who meets the following restrictions" for "whose sale or other distribution of fuel consists only of exporting fuel" in the introductory language of subsection (d); and added subdivisions (d)(1) and (d)(2).

§ 105-434. Excise tax on motor fuel; payment of tax.

(a) Tax. — An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen and one-half cents (17½¢) per gallon, plus a variable rate of either three and one-half cents (3½¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the "Monthly Energy Review," or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two.

(b) Payment. — The tax levied under this Article is due when a return is required to be filed. Each distributor shall, within 20 days after the end of each month, submit a return to the Secretary, on a form prescribed by the Secretary, stating the quantity of motor fuel sold, distributed, or used by the distributor within the State during the preceding calendar month. Each return must show the amount of tax due for the month covered by the return and must be signed by the distributor or the distributor's agent.

In reporting the amount of tax due, a distributor may elect to calculate the tax on adjusted monthly receipts less a tare of two percent (2%) on the first 150,000 gallons, one and one-half percent

(1 ½%) on the next 100,000 gallons, and one percent (1%) on the excess over 250,000 gallons. "Adjusted monthly receipts" means the quantity of motor fuel purchased, produced, refined, or compounded during the month plus the quantity of untaxed motor fuel on hand at the beginning of the month and less the quantity of motor fuel transported out-of-state during the month or lost during the month due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident.

A nonlicensed distributor may obtain a refund for the amount of tax on motor fuel that is purchased by and delivered to the distributor taxpaid and that is lost due to fire, a natural disaster, an act of war, or an accident after it is delivered and before it is sold. To obtain a refund, the nonlicensed distributor must file an application with the Secretary.

(c) Repealed by Session Laws 1993, c. 485, s. 30, effective July 23, 1993.

(d) Local Tax Prohibited. — No county, city, town, or other political subdivision of the State may levy or collect any tax upon the sale, distribution, or use of motor fuel. (1927, c. 93, s. 4; 1929, c. 40, s. 1; 1931, c. 145, s. 24; 1941, cc. 16, 146; 1943, c. 113; 1949, c. 1250, s. 13; 1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1; 1985, c. 261, s. 3; 1985 (Reg. Sess., 1986), c. 937, s. 2; c. 982, s. 3; 1989, c. 692, s. 5.1; 1991, c. 538, ss. 15, 17, 19; 1993, c. 400, s. 11; c. 450, s. 12; c. 485, s. 30.)

Editor's Note. —

Session Laws 1993, c. 400, s. 12, repeals S.L. 1991, c. 538, ss. 17, 18, 19, and 20, which would have amended subsection (a) of this section in 1995 and 1999.

Editor's Note. —

Session Laws 1993, c. 400, s. 16, provides: "The Department of Environment, Health, and Natural Resources shall study options, including alternative fuels and transportation programs, for reducing air pollution from mobile sources through the use of revenues generated under G.S. 105-434 and G.S. 105-445. In conducting this study, the Department shall consider the appropriate role of local air pollution control programs certified under G.S. 143-215.112 in the reduction of air pollution from mobile sources, including which functions can most appropriately be performed by the Department and by certified local programs, and what portion of the revenues generated under G.S. 105-434 and G.S. 105-445 should be appropriated or allocated to certified local programs to support functions performed by certified local programs. The Department shall conduct this study in consultation with representatives of certified local air pollution control programs, local governments, regulated industries, and the environmental and conservation community. The Department shall report its findings and recommendations to the Environmental Review Commission on or before 1 November 1993."

Session Laws 1993, c. 400, s. 11, effective July 19, 1993, rewrote Section 25 of Chapter 538 of the 1991 Session Laws by deleting "Sections 17 and 18 of this act become effective 1 January 1995. Sections 19 and 20 of this act become effective January 1, 1999."

Session Laws 1993, c. 485, c. 30, effective July 23, 1993, repealed subsection (c), providing an exception for nonanhydrous ethanol.

Effect of Amendments. —

Session Laws 1993, s. 450, c. 12, effective August 1, 1993, in subsection (b) in the first paragraph substituted "Secretary" for "Secretary of Revenue", substituted "the distributor" for "him" preceding "within the State", substituted "must show the amount of tax due for the month covered by the return and must" for "shall be accompanied by a payment to the Secretary for the amount of tax shown to be due on the return and shall", substituted "the distributor's agent" for "his agent"; in the second paragraph deleted "The Secretary of Revenue may, in accordance with rules adopted by him, refund to a"; in the third paragraph added at the beginning "A", substituted "may obtain a refund for the amount of" for "the" preceding "tax on motor fuel", substituted "purchased by and delivered to the distributor" for "purchased and delivered to him", deleted "to him" preceding "and before it is sold", and added the last sentence.

§ 105-438.1. Shipping document required to transport motor fuel by railroad tank car or transport truck.

(a) Issuance. — A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Content. — A shipping document issued by a terminal operator or the operator of a bulk plant must be machine-printed and must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(2) The date the motor fuel was loaded.

(3) The gross volume and the net volume temperature-corrected to 60° Fahrenheit of motor fuel loaded.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(c) Reliance. — A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. — A person to whom a shipping document was issued must do all of the following:

(1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.

(2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.

(3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.

b. Receives from the Secretary a confirmation number authorizing the diversion.

c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.

(4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. — A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 30 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

(f) Sanctions. — The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.

(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on the amount of fuel improperly transported or diverted and whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. For a second or subsequent assessment under this subsection, the penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. A penalty imposed under this subsection is in addition to any motor fuel tax assessed. (1993 (Reg. Sess., 1994), c. 726, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 726, s. 11, made this section effective January 1, 1995.

§ 105-440. Applications for and administration of tax refunds; criminal penalty.

(a) Annual Refunds. — An application for an annual refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before April 15th following the end of the calendar year for which the refund is claimed. The application shall state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. — An application for a quarterly refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before the last day of the month following the end of the calendar quarter for which the refund is claimed. The application shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Late Applications. — An application filed with the Secretary within six months of the date the application is due shall be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within six months after the date the application is due. The Secretary may not accept an application filed more than six months after the date the application is due.

(d) Approval of Refund. — If the Secretary of Revenue determines that an application for refund is correct, he shall issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, he shall send a written notice of his determination to the applicant, stating a time and place for a hearing. If, upon holding the hearing, the Secretary finds the applicant has collected or sought to collect a refund to which he is not entitled, he shall reject the application and the applicant shall be required to pay back the tax, if any, refunded to him on the basis of the rejected application. The applicant may seek review of the Secretary's decision under G.S. 105-241.2, 105-241.3, and 105-241.4.

(e) **(Effective October 1, 1994 — See editor's note)** Criminal Penalty. — A person who knowingly makes a false application for refund to obtain a refund to which he is not entitled is guilty of a Class 1 misdemeanor. (1927, c. 93, s. 10; 1931, c. 145, s. 24; 1985 (Reg. Sess., 1986), c. 982, s. 6; 1991, c. 42, s. 2; 1993, c. 539, s. 727; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (e) substituted "Class 1 misdemeanor" for "misdemeanor and is punishable by a fine of up to five hundred dollars ($500.00), imprisonment for up to two years, or both."

§ 105-441. (See editor's note) Enumeration of acts constituting misdemeanor; cancellation of license and bond.

(a) Acts. — Any person who commits one or more of the following acts is guilty of a Class 1 misdemeanor:

(1) Fails to obtain a license required by this Article.
(2) Willfully fails to make a report required by this Article.
(3) Willfully fails to pay a tax when due under this Article.
(4) Makes a false statement in an application, a report, or a statement required under this Article.
(5) Fails to keep records as required under this Article.

(6) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books and records concerning motor fuel.

(7) Fails to disclose the correct amount of motor fuel sold or used in this State.

(8) Fails to file a replacement bond or an additional bond as required under this Article.

(9) Fails to show or give a shipping document as required under this Article.

(b) Cancellation. — The Secretary of Revenue may summarily cancel the license of a distributor when the Secretary finds that the distributor is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a distributor who commits one or more of the acts listed in subsection (a) after holding a hearing on whether the license should be cancelled.

The Secretary of Revenue shall send a distributor whose license is summarily cancelled a notice of the cancellation and shall give the distributor an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary of Revenue shall give a distributor whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing shall be sent by registered mail to the last known address of the distributor.

When the Secretary cancels the license of a distributor, the Secretary shall return the bond or irrevocable letter of credit filed by the distributor if the distributor has paid all taxes and penalties due under this Article. (1927, c. 93, s. 11; 1931, c. 145, s. 24; 1933, c. 544, s. 10; 1973, c. 476, s. 193; 1985 (Reg. Sess., 1986), c. 937, s. 6; 1991, c. 42, s. 3; 1993, c. 485, s. 20; c. 539, s. 728; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 726, s. 5.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 485, s. 20, effective July 23, 1993, and applicable to offenses committed on or after the date of ratification, inserted "a replacement bond or" in subdivision (a)(8).

Session Laws 1993, c. 539, s. 728, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the introductory language of subsection (a) inserted "Class 1" preceding "misdemeanor" and deleted the last sentence which read "On conviction, a distributor shall be fined not less than one hundred dollars ($100.00) and not more than five thousand dollars ($5,000) or, in the case of an individual or the officer or employee charged with the duty of making a report for a corporation, imprisoned not exceeding 24 months, or both".

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, substituted "person" for "distributor" in the introductory language of subsection (a); in subdivision (a)(6) twice deleted "of Revenue" following "Secretary," substituted "person's" for "distributor's"; and added subdivision (a)(9).

§ 105-444. (Effective October 1, 1994 — See editor's note) License constitutes distributor trust officer of State for collection of tax.

The licensing of any person, firm or corporation as a wholesale distributor of gasoline shall constitute such distributor an agent or trust officer of the State for the purpose of collecting the tax on the sale of gasoline imposed in this Article. If any person, firm or corporation who or which adds the amount of the tax levied in this Article to the customary market price for gasoline and/or special fuels and collects the same, shall fail to remit the gasoline and/or special fuels tax to the Secretary of Revenue as provided herein, such failure shall be a Class 1 misdemeanor, and any individual, partner or officer or agent of any association, partnership or corporation who shall fail to remit the tax so collected as herein provided when it is his duty to do so shall be guilty of a Class 1 misdemeanor. (1933, c. 137, s. 1; 1951, c. 838; 1973, c. 476, s. 193; 1993, c. 539, s. 729; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence inserted "Class 1" preceding "misdemeanor" and substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court".

§ 105-445. Application of proceeds of gasoline tax.

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-half cent (1/2¢) a gallon shall be credited as follows: (i) nineteen thirty-seconds (19/32) to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund; (ii) three thirty-seconds (3/32) to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund; and (iii) five sixteenths (5/16) to the Water and Air Quality Account. Of the remaining tax revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to each fund or account to which revenue collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis. (1931, c. 145, s. 24; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1967, c. 1161, s. 2; 1973, c. 507, s. 5; 1989, c. 692, s. 1.13; 1991, c. 538, s. 16; c. 613, s. 2; 1991 (Reg. Sess., 1992), c. 913, s. 4; 1993, c. 400, ss. 11 — 13.)

Editor's Note. —

Session Laws 1993, c. 400, s. 12 repeals Session Laws 1991, c. 538, ss. 17, 18, 19, and 20, which would have amended this section in 1995 and 1999.

Session Laws 1993, c. 400, s. 16 provides: "The Department of Environment, Health, and Natural Resources shall study options, including alternative fuels and transportation programs, for reducing air pollution from mobile sources through the use of revenues generated under G.S. 105-434 and G.S. 105-445. In conducting this study, the Department shall consider the appropriate role of local air pollution control programs certified under G.S. 143-215.112 in the reduction of air pollution from mobile sources, including which functions can most appropriately be performed by the Department and by certified local programs, and what portion of the revenues generated under G.S. 105-434 and G.S. 105-445 should be appropriated or allocated to certified local programs to support functions performed by certified local programs. The Department shall conduct this study in consultation with representatives of certified local air pollution control programs, local governments, regulated industries, and the environmental and conservation community. The Department shall report its findings and recommendations to the Environmental Review Commission on or before 1 November 1993."

Session Laws 1993, c. 400, s. 11, effective July 19, 1993, rewrote Section 25 of Chapter 538 of the 1991 Session Laws by deleting "Sections 17 and 18 of this act become effective 1 January 1995. Sections 19 and 20 of this act become effective 1 January 1999".

Effect of Amendments. —
The 1993 amendment, effective January 1, 1995, substituted "as follows: (i) nineteen thirty-seconds ($^{19}/_{32}$)" for "in equal amounts", substituted "Cleanup Fund; (ii) three thirty-seconds ($^{3}/_{32}$) to the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund; and (iii) five sixteenths ($^{5}/_{16}$) to the Water and Air Quality Account" for "Fund and the Groundwater Protection Loan Fund" following "Underground Storage Tank", and substituted "each fund or account to which revenue collected under this Article is credited" for "the Commercial Leaking Petroleum Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway Fund, and the Highway Trust Fund".

§ 105-446. Refund for tax on motor fuel used other than to operate a motor vehicle.

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440. (1931, c. 145, s. 24; c. 304; 1933, c. 211; 1937, c. 111; 1941, c. 15; 1943, c. 123; 1955, c. 1350, s. 24; 1957, c. 1236, s. 1; 1961, cc. 480, 668; 1967, c. 699; 1969, c. 600, s. 20; c. 1298, s. 3; 1973, c. 476, s. 193; c. 1287, s. 14; 1981, c. 690, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 5; 1989, c. 692, s. 5.2; 1991, c. 42, s. 4; 1993 (Reg. Sess., 1994), c. 745, s. 20.)

Effect of Amendments. —
The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in the section catchline, substituted "operate" for "propel."

§ 105-447. (See editor's note) Reports and records of movements of motor fuel.

(a) Report. — A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

(1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, and the date the motor fuel was received.

(2) The name and address of each person to whom the transporter delivered motor fuel from a location inside the State to a location outside the State, the amount of motor fuel delivered, and the date the motor fuel was delivered.

(b) Records. — A person who is required to submit a report under subsection (a) must keep a record of all shipping documents or other documents used to determine the information provided in the report. The records must be kept for three years from the due date of the report to which the records apply. (1929, c. 230; 1933, c. 137, s. 1; 1973, c. 476, s. 193; 1993, c. 539, s. 730; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 726, s. 6.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court."

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, substituted "Reports and records of movements of motor fuel" for "Reports of carriers" as the catchline of this section, and rewrote the section.

§ 105-449. Exemption of motor fuel used in public school transportation; false returns, etc.

(a) Motor fuel purchased by a local board of education for use in public school transportation in this State is exempt from the excise tax levied by this Article provided an invoice for the fuel stating the board of education to whom the fuel was delivered, the price per gallon of the fuel excluding the tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. To implement this exemption, a person who holds a State contract for the sale of motor fuel to be used in public school transportation shall invoice motor fuel sold to a local board of education for this purpose at the prevailing contract price, excluding the tax, and a person who does not hold a State contract for the sale of motor fuel to be used in public school transportation but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to a local board of education at the lowest informal bid price, excluding the tax.

(b) A person authorized to sell motor fuel to a local board of education who paid the tax levied by this Article on fuel sold to the local board for public school transportation may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a), to the refund application. Upon receipt of a proper application and invoice, the Secretary shall issue a warrant upon the State Treasurer for the amount of tax paid.

(c) It is the intent and purpose of this section to relieve motor fuel used in the public school system of North Carolina from the tax levied by this Article and thereby to that extent reduce the cost of public school transportation.

(d) The motor fuel tax exemption provided by this section shall include motor fuel sold for use in automobiles owned by the school boards and furnished to school superintendents to be used only on official business, in public school activities buses, driver training vehicles, bookmobiles belonging to or operated by county libraries and in public school trucks, vehicles and implements used in public school buildings and grounds maintenance and repair as well as motor fuel sold for use in school service trucks used to service school buses.

(e) **(Effective October 1, 1994 — See editor's note)** Any person making a false return or affidavit for the purpose of securing a refund to which he is not entitled under the provisions of this section shall be guilty of a Class 1 misdemeanor. (1941, c. 119; 1949, c. 1250, s. 13; 1959, c. 155; 1969, c. 600, s. 20; 1973, c. 476, s. 193; 1981, c. 690, s. 1; 1985 (Reg. Sess., 1986), c. 937, s. 9; c. 982, s. 11; 1993, c. 539, s. 731; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (e) substituted "Class 1 misdemeanor" for "misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars ($500.00), or imprisoned not exceeding two years, in the discretion of the court."

§ 105-449A. Exemption of motor fuel used in State vehicles.

(a) Motor fuel purchased by the State for use in State-owned motor vehicles for State business is exempt from the excise tax levied by this Article if an invoice for the fuel stating the agency to whom the fuel was delivered, the price per gallon of the fuel excluding the tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. A person who holds a State contract for the sale of motor fuel to be used in State-owned motor vehicles for

State business shall invoice motor fuel sold to the State for this purpose at the prevailing contract price, excluding the tax, and a person who does not hold a State contract for the sale of motor fuel to be used in State-owned motor vehicles for State business but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to the State at the lowest informal bid price, excluding the tax.

(b) A person authorized to sell motor fuel to the State who paid the tax levied by this Article on fuel sold to the State for use in State-owned motor vehicles for State business may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a) of this section, to the refund application. Upon receipt of a proper application and invoice, the Secretary shall refund the amount of tax paid.

(c) **(Effective October 1, 1994 — See editor's note)** A person who makes a false invoice or application for refund under this section shall be guilty of a Class 1 misdemeanor. (1991, c. 689, s. 25(a); 1993, c. 539, s. 735; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (c) substituted "Class 1 misdemeanor" for "misdemeanor, punishable by a fine of up to five hundred dollars ($500.00), imprisonment for up to two years, or both".

ARTICLE 36A.

Special Fuels Tax.

§ 105-449.2. Definitions.

The following definitions apply in this Article:

(1) Bulk user. — A person who maintains storage facilities for fuel and uses part or all of the stored fuel to propel a motor vehicle.

(1a) Code. — Defined in G.S. 105-228.90.

(2) Diesel. — A liquid suitable for use as fuel in a diesel-powered motor vehicle.

(2a) Dyed diesel fuel. — Diesel fuel that is required to be dyed under section 4082 of the Code or under regulations adopted by the United States Environmental Protection Agency.

(3) Fuel. — A combustible gas or liquid that can be used to generate power to propel a motor vehicle and that is not subject to tax under Article 36 of this Chapter.

(4) Highway. — Defined in G.S. 20-4.01(13).

(5) Liquid. — A substance that is liquid at a temperature above 60 degrees F. and a pressure greater than 14.7 pounds per square inch absolute.

(6) Motor vehicle. — A self-propelled vehicle that is designed for use on a highway.

(7) Person. — Defined in G.S. 105-228.90.

(8) Reseller. — Either of the following:
  a. A person who maintains storage facilities for diesel and who sells the diesel at retail or dispenses the diesel at a retail location.
  b. A person who maintains storage facilities for fuel, other than diesel, and who sells the fuel at retail or dispenses the fuel at a retail location into the supply tank of, or attached to, a motor vehicle.

(9) Secretary. — The Secretary of Revenue.

(10) Supplier. — A person who does one or more of the following:
  a. Acquires fuel for sale or delivery to a user-seller.
  b. Maintains an inventory of fuel, part or all of which the person uses or sells to someone other than a user-seller.
  c. Imports fuel into the State, by a means other than the usual tank or receptacle connected with the engine of a motor vehicle, for use by that person.

(11) Use. — The term includes the receipt of fuel in the fuel supply tank of a motor vehicle and the receipt of fuel in a receptacle from which fuel is supplied to a motor vehicle.

(12) User. — A person who owns or operates a fuel-propelled motor vehicle licensed under Chapter 20 and who does not maintain storage facilities for fueling the motor vehicle.

(13) User-seller. — A bulk-user or a reseller. (1955, c. 822, s. 1; 1965, c. 1120, s. 1; 1973, c. 476, s. 193; c. 1431; 1979, c. 13, s. 1; 1981, c. 105, s. 1; 1985, c. 413, s. 2; c. 528, s. 2; c. 602, s. 1; 1985 (Reg. Sess., 1986), c. 826, s. 12; c. 937, ss. 10, 13, 14, 16; 1991, c. 42, s. 5; c. 441, s. 4; 1991 (Reg. Sess., 1992), c. 913, s. 13; 1993, c. 354, s. 26; 1993 (Reg. Sess., 1994), c. 726, s. 9.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. —

The 1993 amendment, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit" in subdivision (7).

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, added subdivisions (1a) and (2a).

§ 105-449.4. Application for supplier's license.

To obtain a license as a supplier, an applicant must file an application with the Secretary on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1991, c. 42, s. 6; 1993, c. 354, s. 27.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, added the present fourth sentence.

§ 105-449.16. Levy of tax and application of tax proceeds.

(a) A tax is imposed upon all of the following fuel:

(1) Fuel sold or delivered by a supplier to a licensed user-seller.

(2) Fuel used by a supplier in a motor vehicle owned, leased, or operated by the supplier.

(3) Fuel delivered by a supplier directly into the fuel supply tank of a motor vehicle.

(4) Fuel imported by a user-seller into this State, by a means other than carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to operate a motor vehicle.

(5) Fuel acquired tax free by a user-seller or user in this State for resale or to operate a motor vehicle.

The tax on liquid fuel is at the rate established under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid fuel, as determined by the Secretary. A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller.

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of the tax from the supplier instead of the user. The tax levied by this Article is in lieu of rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435.

(b) The same percentage amounts of revenue collected under this Article shall be credited to the Highway Fund and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds allowed under this Article shall be charged to the Highway Fund and to the Highway Trust Fund as are charged to those Funds under that statute.

(c) Expired. (1955, c. 822, s. 1; 1969, c. 600, s. 21; 1979, 2nd Sess., c. 1187, ss. 3, 6; 1981, c. 690, s. 2; 1983, c. 591, ss. 2, 4; 1983 (Reg. Sess., 1984), c. 1003, s. 2; 1985, c. 261, s. 1; c. 413, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 12; 1989, c. 692, s. 1.15; 1991, c. 441, s. 9; 1993, c. 485, s. 29; 1993 (Reg. Sess., 1994), c. 745, s. 21.)

Editor's Note. — Subsection (c) of this section, which exempted nonanhydrous ethanol from the tax in this section if it was not for sale or distribution, expired January 1, 1993.

Effect of Amendments. — The 1993 amendment, effective July 23, 1993 substituted "tax and" for "tax," and substituted "proceeds." for "proceeds, and exemption for nonanhydrous ethanol" in the catchline to this section.

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, in subdivisions (a)(4) and (a)(5) substituted "operate" for "propel".

§ 105-449.17. Exemption for fuel sold for nonhighway use.

The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user or user-seller when all of the following apply:

(1) The fuel is for a purpose other than to operate a motor vehicle.

(2) The supplier dispenses the fuel into a storage facility that is not required to be marked or is marked as follows with the phrase "For Nonhighway Use" or a similar phrase that clearly indicates the fuel is not to be used to operate a motor vehicle:

a. The storage tank of the storage facility must be marked if the storage tank is visible.

b. The fillcap or spill containment box of the storage facility must be marked.

c. The dispensing device that serves the storage facility must be marked.

A storage facility must be marked unless it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

(3) The supplier does not know or have reason to know the fuel is to be used to operate a motor vehicle.

A supplier is liable for the tax due on fuel dispensed into a storage facility of a user or user-seller that is required to be marked but is not marked to indicate the fuel is to be used for a purpose other than to operate a motor vehicle. A user or user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked for nonhighway use and is subsequently used or sold for use to operate a motor vehicle. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1991, c. 42, s. 10; c. 441, s. 10; 1993 (Reg. Sess., 1994), c. 745, s. 22.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted "operate" for "propel" throughout the section.

§ 105-449.18. Liability for tax on non-tax-paid fuel sold or delivered to unlicensed persons.

A person who, knowing or having reason to know that the fuel is to be sold or used to operate a motor vehicle, sells or delivers to a person who is not licensed under this Article fuel on which the tax due under this Article has not been paid is liable for the tax imposed on the fuel by this Article. (1955, c. 822, s. 1; 1985, c. 528, s. 1; 1993 (Reg. Sess., 1994), c. 745, s. 23.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted "operate" for "propel".

§ 105-449.19. Time when supplier must file return and pay any tax due.

(a) Return. — A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to operate a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to operate a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period is due when the return for that period is due.

(b) Information. — A return filed by a supplier must contain all of the following information:

(1) The amount of fuel the supplier had on hand on the first and last days of the reporting period.

(2) The amount of fuel the supplier received during the reporting period.

(3) The amount of fuel the supplier used during the reporting period to operate a motor vehicle and the amount of fuel the supplier used during the reporting period for a purpose other than to operate a motor vehicle, stated separately.

(4) The amount of fuel the supplier sold or delivered to a licensed bulk-user, a licensed reseller, a licensed user, or other persons, stated separately. (1955, c. 822, s. 1; 1969, c. 600, s. 21; 1973, c. 476, s. 193; 1981, c. 690, s. 2; 1985 (Reg. Sess., 1986), c. 937, s. 17; c. 982, s. 13; 1991, c. 441, s. 11; 1993, c. 450, s. 13; 1993 (Reg. Sess., 1994), c. 745, s. 24.)

Effect of Amendments. —

The 1993 amendment, effective August 1, 1993, substituted "Tax owed by a supplier on fuel acquired, sold, delivered, or used by the supplier during a reporting period is due when the return for that period is due" for "A supplier must pay any tax due on fuel acquired, sold, delivered, or used by the supplier during a reporting period when filing a return for that period" in the last sentence of subsection (a).

The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted "operate" for "propel" throughout the section.

§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or [G.S.] 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the unreported fuel tax-free to operate a motor vehicle. When a user-seller sells or uses more fuel to operate a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to operate a motor vehicle, the user-seller is presumed to have acquired tax-free to operate a motor vehicle all fuel not reported as having been acquired to operate a motor vehicle. (1955, c. 822, s. 1; 1967, c. 1110, s. 14; 1973, c. 476, s. 193; 1991, c. 42, s. 11; c. 441, s. 12; 1993 (Reg. Sess., 1994), c. 745, s. 25.)

Editor's Note. — The bracketed "G.S." was inserted in the first sentence by the editors.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted "operate" for "propel" throughout the section.

§ 105-449.21. Report of purchases and payment of tax by user-seller.

On or before the last day of the month immediately following the end of the quarter, each user-seller not otherwise licensed as a supplier shall render to the Secretary a statement on forms furnished by the Secretary which shall be signed by the user-seller. The statement shall show the quantity of fuel on hand at the beginning of the quarter, the quantity on hand at the end of the quarter, the quantity sold or used, and each and every purchase made by the user-seller during the preceding calendar quarter. Each purchase shall be specifically noted on the statement and the statement shall show the name and address of the supplier and the quantity and date of each purchase. Tax owed by a user-seller because of fuel imported or acquired tax-free in any manner whatsoever during a reporting period is due when the statement for that period is due. (1955, c. 822, s. 1; 1967, c. 1110, s. 14; 1973, c. 476, s. 193; 1981, c. 105, s. 3; 1993, c. 450, s. 14.)

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, in the second sentence inserted "the" preceding "quantity on hand at the end of the quarter", substituted "used," for "used" preceding "and each and every"; in the fourth sentence substituted "Tax owed by a user-seller" for "Each user-seller at the time of rendering such statement shall pay to the Secretary the tax or taxes for the preceding calendar quarter which may be due", and substituted "whatsoever during a reporting period is due when the statement for that period is due" for "whatsoever".

§ 105-449.24A. Penalties for highway use of dyed diesel fuel.

It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted under section 4082 of the Code. A person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the motor vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the motor vehicle. The penalty is the greater of one thousand dollars ($1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed. (1993 (Reg. Sess., 1994), c. 726, s. 10.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 726, s. 11, made this section effective January 1, 1995.

§ 105-449.26. User-sellers and certain suppliers must give receipts for and keep records of fuel sold at retail.

(a) Receipts and Records. — When required by this section, a user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt for and keep a record of certain fuel sold at retail from any of the following locations:

(1) A retail service station or other retail establishment operated by the user-seller or supplier.
(2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.
(3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

If the fuel is sold to operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt and must keep a record of any receipt given. If the fuel is diesel and is sold for a purpose other than to operate a motor vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer asks for a receipt but must always keep a record of the sale unless subsection (c) exempts the user-seller or supplier from the requirement of keeping a record.

If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to operate a motor vehicle, the Secretary may require the user-seller or supplier to keep a record of all fuel sold at retail to operate a motor vehicle. A user-seller or supplier who is required to keep a record of diesel sold at retail for a purpose other than to operate a motor vehicle is liable for the excise tax and the inspection tax on the diesel if the user-seller or supplier does not keep a record of the sale.

(b) Content. — A record of a sale and a receipt for a sale shall include all of the following information:

(1) The name and address of the user-seller or supplier.
(2) The name and address of the person buying the fuel.
(3) The date the fuel was sold.
(4) The amount of fuel sold.
(5) The type of fuel sold.
(6) The total sales price of the fuel.
(7) Either of the following:
    a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
    b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate.
(8) If the fuel is diesel and is sold for a purpose other than to operate a motor vehicle, the type of container or equipment into which the fuel was dispensed.

(c) Exception. — A user-seller or supplier who sells diesel at a marina from a storage facility whose location makes it improbable that the diesel could be dispensed for a purpose other than to operate a watercraft must keep a record of a sale only if the user-seller or supplier gives the buyer a receipt for the sale. (1955, c. 822, s. 1; 1991, c. 441, s. 13; 1991 (Reg. Sess., 1992), c. 913, s. 7; 1993 (Reg. Sess., 1994), c. 745, s. 26.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, substituted "operate" for "propel" throughout the section, and in the third paragraph of subsection (a) substituted "the excise tax and the inspection tax" for "the tax and the inspection fee."

§ 105-449.27. Shipping document requirements and transporter report requirements that apply to motor fuel also apply to fuel.

The requirements set by G.S. 105-438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-447 concerning reports and records of movements of motor fuel apply to movements of fuel. (1955, c. 822, s. 1; 1993 (Reg. Sess., 1994), c. 726, s. 7.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, substituted "Shipping document requirements and transporter report requirements that apply to motor fuel also apply to fuel" for "Article 9 of Revenue Act made applicable" as the catchline of this section, and rewrote the section.

§ 105-449.32: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 745, s. 27, effective July 15, 1994.

§ 105-449.34. (See editor's note) Acts and omissions declared to be misdemeanors.

(a) Class 1 Misdemeanors. — A person who commits one or more of the following acts is guilty of a Class 1 misdemeanor:

(1) Fails to obtain a license required by this Article.
(2) Willfully fails to make a report required by this Article.
(3) Willfully fails to pay a tax when due under this Article.
(4) Makes a false statement in an application, a report, or a statement required under this Article.
(5) Fails to keep records as required under this Article.
(6) Refuses to allow the Secretary or a representative of the Secretary to examine the licensee's books and records concerning fuel.
(7) Fails to disclose the correct amount of fuel sold or used in this State.
(8) Fails to file a replacement bond or an additional bond as required under this Article.
(9) Fails to show or give a shipping document as required under this Article.

(b) Class 2 Misdemeanors. — A person who commits one or more of the following acts is guilty of a Class 2 misdemeanor:

(1) Knowingly dispenses non-tax-paid fuel into the supply tank of a motor vehicle.

(2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a motor vehicle. (1955, c. 822, s. 1; 1973, c. 476, s. 193; 1991, c. 42, s. 12; 1993, c. 140, s. 1; c. 485, s. 21; c. 539, s. 732; 1994, Ex. Sess., c. 14, s. 52; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 140, s. 1, effective December 1, 1993, deleted "penalties" from the catchline to this section; added the subsection (a) designation and catchline; in the introductory language of subsection (a) substituted "misdemeanor and is punishable as provided in G.S. 14-3" for "misdemeanor"; in subdivision (a)(6) twice deleted "of Revenue" following "Secretary"; and added subsection (b).

Session Laws 1993, c. 485, s. 21, effective July 23, 1993, inserted "a replacement bond or" in subdivision (a)(8).

Session Laws 1993, c. 539, s. 732, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the introductory language of subsection (a) inserted "Class 1" preceding "misdemeanor".

The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, in subsection (b), substituted "Class 2 Misdemeanors" for "Six Month Misdemeanors" and substituted "Class 2 misdemeanor" for "misdemeanor and is punishable by imprisonment for up to six months, a fine of up to five hundred dollars ($500.00), or both."

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, in subsection (a) substituted "Class 1 Misdemeanors" for "General Misdemeanors" and substituted "misdemeanor:" for "misdemeanor and is punishable as provided in G.S. 14-3:"; and added subdivision (a)(9).

ARTICLE 36B.

Tax on Carriers Using Fuel Purchased Outside State.

§ 105-449.37. Definitions; tax liability.

(a) Definitions. — The following definitions apply in this Article:

(1) Motor carrier. — A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle under the International Fuel Tax Agreement. The term does not include the United States, the State, or a political subdivision of the State.

(1a) Motor vehicle. — A motor vehicle as defined in G.S. 20-4.01(23), other than special mobile equipment as defined in G.S. 20-4.01(44).

(2) Operations. — Operations of all motor vehicles described in subdivision (1), whether loaded or empty and whether or not operated for compensation.

(2a) Person. — Defined in G.S. 105-228.90.

(3) Secretary. — The Secretary of Revenue.

(b) Liability. — A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period. (1955, c. 823, s. 1; 1973, c. 476, s. 193; 1983, c. 713, s. 55; 1989, c. 7, s. 1; 1991, c. 182, s. 2; c. 487, s. 2; 1991 (Reg. Sess., 1992), c. 913, s. 8; 1993, c. 354, s. 28.)

Editor's Note. — Session Laws 1993, c. 354, s. 29 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, substituted "Defined in G.S. 105-228.90" for "An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit" in subdivision (a)(2a).

§ 105-449.41. (Effective October 1, 1994 — See editor's note) Penalty for false statements.

Any person who wilfully and knowingly makes a false statement orally, or in writing, or in the form of a receipt for the sale of motor fuel, for the purpose of obtaining or attempting to obtain or to assist any other person, partnership or corporation to obtain or attempt to obtain a credit or refund or reduction of liability for taxes under this Article shall be guilty of a Class 1 misdemeanor. (1955, c. 823, s. 5; 1993, c. 539, s. 733; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor".

§ 105-449.51. (Effective October 1, 1994 — See editor's note) Violations declared to be misdemeanors.

Any person who operates or causes to be operated on a highway in this State a motor vehicle that does not carry a registration card as required by this Article, does not properly display an identification marker as required by this Article, or is not registered in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction thereof, shall only be fined no less than ten dollars ($10.00) nor more than two hundred dollars ($200.00). Each day's operation in violation of any provision of this section shall constitute a separate offense. (1955, c. 823, s. 15; 1973, c. 476, s. 193; 1983, c. 713, s. 59; 1993, c. 539, s. 734; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only".

§ 105-449.57. Cooperative agreements between states.

The Secretary may enter into cooperative agreements with other states for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other provisions as will facilitate the administration of the agreement.

In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another state any information in the Department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose to officials of another state the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each state to audit the records of motor carriers based in the state to determine if the gasoline or other motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on motor carriers based in the state to each state in which the carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this State who have taxable use of gasoline or other motor fuels in this State, the Secretary may utilize the audit findings received from another state as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest shall be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any provision to the contrary is void. (1989, c. 667, s. 1; 1993, c. 485, s. 36.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "In accordance with G.S. 105-259" for "Notwithstanding the provisions of G.S. 105-259 to the contrary" at the beginning of the third paragraph.

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

ARTICLE 39.

Local Government Sales and Use Tax.

§ 105-466. Levy of tax.

(a) In the event a majority of those voting in a special election held pursuant to G.S. 105-465 shall approve the levy of the local sales and use tax, the board of county commissioners may, by resolution, proceed to levy the tax.

(b) In addition, the board of county commissioners may, in the event no election has been held within five years under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 10 days' public notice and after a public hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465.

(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which shall in no case be earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution.

(d) Upon adoption of a resolution levying the tax, the board of county commissioners shall immediately deliver a certified copy of the resolution to the Secretary, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Upon receipt of these documents, the Secretary shall collect and administer the tax as provided in this Article. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193; 1977, c. 372, s. 1; 1993, c. 485, s. 22.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, rewrote subsection (d).

§ 105-469. Secretary to collect and administer local sales and use tax.

The Secretary shall collect and administer a tax levied by a county pursuant to this Article. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1993, c. 485, s. 23.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "Secretary to collect and administer local sales and use tax" for "Collection and administration of local sales and use tax; authorization to promulgate rules and regulations" in the catchline to this section, and rewrote the section.

§ 105-472. Disposition and distribution of taxes collected.

(a) County Allocation. — The Secretary shall, on a quarterly basis, allocate to each taxing county for which the Secretary collects the tax the net proceeds of the tax collected in that county under this Article. For the purpose of this section, "net proceeds" means the gross proceeds of the tax collected in each county under this Article less taxes refunded, the cost to the State of collecting and administering the tax in the county as determined by the Secretary, and other deductions that may be charged to the county. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate the taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article during that month and shall include them in the quarterly distribution.

(b) Distribution Between Counties and Cities. — The Secretary shall divide the amount allocated to each taxing county among the county and its municipalities in accordance with the method determined by the county. The board of county commissioners shall, by resolution, choose one of the following methods of distribution:

(1) Per Capita Method. — The net proceeds of the tax collected in a taxing county shall be distributed to that county and to the municipalities in the county on a per capita basis according to the total population of the taxing county, plus the total population of the municipalities in the county. In the case of a municipality located in more than one county, only that part of its population living in the taxing county is considered its "total population". In order to make the distribution, the Secretary shall determine a per capita figure by dividing the amount allocated to each taxing county by the total population of that county plus the total population of all municipalities in the county. The Secretary shall then multiply this per capita figure by the population of the taxing county and by the population of each municipality in the county; each respective product shall be the amount to be distributed to the county and to each municipality in the county. To determine the population of each county and each municipality, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(2) Ad Valorem Method. — The net proceeds of the tax collected in a taxing county shall be distributed to that county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding the distribution. For purposes of this section, the amount of the ad valorem taxes levied by a county or municipality includes ad valorem taxes levied by the county or municipality in behalf of a taxing district and collected by the county or municipality. In addition, the amount of taxes levied by a county includes ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be

distributed to each county and municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distribution of the proceeds of the tax levied under this Article shall in turn immediately share the proceeds with each district in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality that fails to provide the Department of Revenue with information concerning ad valorem taxes levied by it adequate to permit a timely determination of its appropriate share of tax proceeds collected under this Article may be excluded by the Secretary from each quarterly distribution with respect to which the information was not provided in a timely manner, and those tax proceeds shall then be distributed only to the remaining counties or municipalities, as appropriate. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located in the county for any quarter with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the county and the municipalities in the county, the Department shall use the last property valuation of the public service company that has been certified.

The board of county commissioners in each taxing county shall, by resolution adopted during the month of April of each year, determine which of the two foregoing methods of distribution shall be in effect in the county during the next succeeding fiscal year. In order for the resolution to be effective, a certified copy of it must be delivered to the Secretary in Raleigh within 15 calendar days after its adoption. If the board fails to adopt a resolution choosing a method of distribution not then in effect in the county, or if a certified copy of the resolution is not timely delivered to the Secretary, the method of distribution then in effect in the county shall continue in effect for the following fiscal year. The method of distribution in effect on the first of July of each fiscal year shall apply to every distribution made during that fiscal year.

(c) Municipality Defined. — As used in this Article, the term "municipality" means "city" as defined in G.S. 153A-1. (1971, c. 77, s. 2; 1973, c. 476, s. 193; c. 752; 1979, c. 12, s. 1; 1979, 2nd Sess., c. 1137, s. 49; 1981, c. 4, s. 2; 1985 (Reg. Sess., 1986), c. 934, s. 2; 1991, c. 325, s. 8; 1993, c. 485, s. 24.)

Local Modification. — By virtue of Session Laws 1993 (Reg. Sess., 1994), c. 577, ss. 1 and 2, the citation for Pender in the main volume should be stricken and "1993 (Reg. Sess., 1994), c. 577" substituted therefor.

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, rewrote this section.

ARTICLE 40.

Supplemental Local Government Sales and Use Taxes.

§ 105-482. Limitations.

This Article applies only to counties that levy one percent (1%) sales and use taxes under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws. (1983, c. 908, s. 1; 1993, c. 485, s. 25.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "Laws" for "Laws and do not levy one half percent (1/2%) local sales and use taxes under Article 41 of this Chapter".

§ 105-483. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 40 of this Chapter. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1983, c. 908, s. 1; 1993, c. 485, s. 26.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "this Chapter" for "Chapter 105" in the third sentence, and deleted the former fourth sentence, which read "All taxes levied pursuant to this Article shall be collected by the Secretary and may not be collected by a taxing county".

§ 105-487. Use of additional tax revenue by counties and municipalities.

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.

(c) The Local Government Commission may, upon petition by a county or municipality, authorize a county or municipality to use part or all its tax revenue, otherwise required by subsection (a) or (b) to be used for public schools or water and sewage capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the City Council or Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county or municipality can provide for its public school or water and sewage capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school or water and sewage capital needs, but also the other capital needs of the petitioning county or municipality. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school or water and sewage capital needs of the petitioning county or municipality and the percentage of revenue otherwise restricted by subsection (a) or (b) that may be used by the petitioning county or municipality for any lawful purpose.

Decisions of the Commission allowing counties or municipalities to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) or (b) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county or municipality whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a county or municipality, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county or municipality may expend part or all of the revenue restricted for public school or water and sewage capital needs pursuant to subsections (a) and (b) in the fiscal year in which the revenue is received, or the county or municipality may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes. (1983, c. 908, s. 1; 1993, c. 255, ss. 1, 3.)

Effect of Amendments. — Session Laws 1993, c. 255, s. 1, effective July 1, 1993, in subsection (a), substituted "next 10 fiscal years" for "second five fiscal years".

Session Laws 1993, c. 255, s. 3, effective July 1, 1993, in the second sentence of the first paragraph of subsection (c), substituted "of a resolution adopted by the City Council or Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end; in the third sentence of the first paragraph of subsection (c), added at the beginning "The petition"; in the first sentence of the second paragraph of subsection (c), substituted "shall" for "may" and added at the end "contained in the petition concerning not only the public school or water and sewage capital needs, but also the other capital needs of the petitioning county or municipality"; and in the second sentence of the second paragraph of subsection (c) added at the beginning "The Commission may also consider information".

ARTICLE 42.

Additional Supplemental Local Government Sales and Use Taxes.

§ 105-498. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 42 of this Chapter. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1993, c. 485, s. 27.)

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "this Chapter" for "Chapter 105" in the third sentence, and deleted the former fourth sentence, which read "All taxes levied pursuant to this Article shall be collected by the Secretary and may not be collected by a taxing county".

§ 105-502. Use of additional tax revenue by counties.

(a) Sixty percent (60%) of the revenue received by a county under this Article during the first 16 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect.

(b) The Local Government Commission may, upon petition by a county, authorize a county to use part or all of its tax revenue, otherwise required by subsection (a) to be used for public school capital outlay purposes, for any lawful purpose. The petition shall be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county. The Commission may consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) A county may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes.

(d) For purposes of this section in determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 622, s. 11; 1993, c. 255, ss. 2, 4.)

Effect of Amendments. — Session Laws 1993, c. 255, effective July 1, 1993, in s. 2, in subsection (a) substituted "16 fiscal years" for "11 fiscal years"; and in s. 4, in subsection (b), in the first sentence of the first paragraph, substituted "of a resolution adopted by the Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end and in the second sentence added at the beginning "The petition"; and in subsection (b), in the first sentence of the second paragraph, substituted "shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county" for "may", and in the second sentence added "The Commission may".

§ 105-504. Use of additional tax revenue by municipalities.

(a) Except as provided in subsection (b) or (e), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.

(b) The Local Government Commission may, upon petition by a municipality, authorize a municipality to use part or all its tax revenue, otherwise required by subsection (a) to be used for water and sewage capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the City Council and transmitted to the Local Government Commission. The petition shall demonstrate that the municipality can provide for its water and sewage capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information in the petition concerning not only the water and sewage capital needs but also the other capital needs of the petitioning municipality. The Commission may consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the water and sewage capital needs of the petitioning municipality and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning municipality for any lawful purpose.

Decisions of the Commission allowing municipalities to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restriction imposed by that subsection expires. A municipality whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a municipality, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(d) A municipality may expend part or all of the revenue restricted for water and sewage capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the municipality may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes.

(e) An authorization received by a municipality under G.S. 105-487(c) to use all or part of its tax revenue for any lawful purpose, which is still in effect during any period during which revenues are received under this Article shall, to the extent and duration of its applicability, also apply to the use of revenues received under this Article. (1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 282, s. 15; 1993, c. 255, s. 5.)

Effect of Amendments. — The 1993 amendment, effective July 1, 1993, in subsection (b), in the second sentence of the first paragraph, substituted "of a resolution adopted by the City Council and transmitted to" for "prescribed by" and deleted "and" from the end, and in the third sentence added at the beginning "The petition"; and in subsection (b), in the first sentence of the second paragraph, substituted "shall consider information in the petition concerning not only the water and sewage capital needs but also the other capital needs of the petitioning municipality" for "may", and in the second sentence added "The Commission may" at the beginning.

Chapter 105A.

Editor's Note. — The legislation and annotations affecting Chapter 105A have been included in a recently published replacement chapter.

Chapter 105B.

Defaulted Student Loan Recovery Act.

Article 1.

Withholding of Personal Earnings.

Sec.
105B-4. Prohibited conduct by payor; civil penalty.

ARTICLE 1.

Withholding of Personal Earnings.

§ 105B-4. Prohibited conduct by payor; civil penalty.

(a) Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the Authority joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the Authority for any amount which such payor should have withheld, except that such payor shall not be required to vary his normal pay or disbursement cycles in order to comply with these provisions.

(b) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any debtor because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. For a first offense, the civil penalty shall be one hundred dollars ($100.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by a debtor as a result of the violation, and a debtor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

(c) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1989, ch. 475, s. 1.)

Editor's Note. — The section has been set out above to correct a printing error in the main volume.

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of Department of Justice of the State of North Carolina.

Michael F. Easley
Attorney General of North Carolina

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